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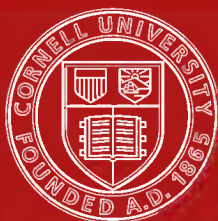
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DOCUMENTS

RELATIVE TO

CENTRAL AMERICAN AFFAIRS,

AND THE

ENLISTMENT QUESTION.

PRINTED BY DIRECTION OF THE HOUSE OF REPRESENTATIVES OF THE U. STATES

WASHINGTON:
CORNELIUS WENDELL, PRINTER.

1856.

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IN THE HOUSE OF REPRESENTATIVES, *April 1, 1856.*

Resolved, That there be printed for the use of the members of the House of Representatives of the thirty-fourth Congress, ten thousand copies of the documents and correspondence between the government of Great Britain and the United States in relation to Central American affairs, communicated to the present Congress by the President of the United States with his annual message : said documents and correspondence to include the correspondence in relation to an arbitration of said question between the two governments ; the correspondence in regard to recruiting for the British army within the United States, together with the documents and evidence relating to that subject communicated to the Senate on the 28th of February, 1856 ; and the confession of Henry Hertz, made after conviction, to the district court of the United States at Philadelphia, on the 11th day of October, A. D. 1855, and the several papers referred to in that confession.

And be it further resolved, That ten thousand copies of the map of Central America, prepared under the direction of the Coast Survey office, be printed to accompany said work.

Attest :

WILLIAM CULLOM, *Clerk.*

By JOHN N. BARCLAY, *Assistant Clerk.*

CORRESPONDENCE

BETWEEN

GREAT BRITAIN AND THE UNITED STATES,

IN RELATION TO

CENTRAL AMERICAN AFFAIRS,

COMMUNICATED

TO THE FIRST SESSION OF THE THIRTY-FOURTH CONGRESS BY THE PRESIDENT
OF THE UNITED STATES WITH HIS ANNUAL MESSAGE.

CORRESPONDENCE
BETWEEN
GREAT BRITAIN AND THE UNITED STATES,
IN RELATION TO
CENTRAL AMERICAN AFFAIRS.

Mr. Marcy to Mr. Buchanan.

[Extract.]

[No. 2.]

DEPARTMENT OF STATE,
Washington, July 2, 1853.

SIR: * * * * * * * * * *

Great Britain, for a long period, has had possession of a district of country on the shores of the Bay of Honduras, called "the Belize." The right she has to hold it is derived from a grant by Spain; and this right is limited to a single purpose, with an express prohibition against using it for any other. A possession so restricted as to its use could never be considered a British colony. While she confines herself to the boundaries specified in the treaties with Spain, in 1783 and 1786, and uses the district or country described only for the purposes stipulated therein, we have no right to complain that she is infringing our policy; but when she extends her occupancy by encroachments far beyond the prescribed bounds, and changes its tenure by exercising over it civil authority, a very different character is given to this settlement; it then becomes a new colony on this continent.

Since the acquisition of California, Great Britain has manifested a more matured design to change this Spanish license to cut dye-wood and mahogany at the Belize into a British dominion. The object of such change cannot be misunderstood, nor will it be disregarded by this government. The character of the British settlement at the Belize is explicitly shown by an authority which will not be controverted or questioned by the government of Great Britain. This authority is no other than the Parliament of the United Kingdom. In two acts—one passed in 1817, and the other in 1819—it is admitted that the Belize is not within the British dominions. In these acts provision is made for the punishment of crimes committed at Belize, which otherwise could not be punished by any existing law, because

Belize, as expressly alleged, was not a British dominion. In 1826, Great Britain renewed, in her treaty with Mexico, the special grant made to her by Spain in the treaties of 1783 and 1786, to enter into and occupy the Belize upon the same terms and with the same restrictions as those imposed upon her by Spain. The United States, while they concede that Great Britain has rights in the Belize, positively deny that the Belize is a British province, or any part of the British dominions; and in maintaining the policy referred to, they are bound to resist any attempt to convert it into a British colony.

The protectorate which Great Britain has assumed over the Mosquito Indians is a most palpable infringement of her treaties with Spain, to which reference has just been made; and the authority she is there exercising, under pretence of this protectorate, is in derogation of the sovereign rights of several of the Central American States, and contrary to the manifest spirit and intention of the treaty of April 19, 1850, with the United States.

Though, ostensibly, the direct object of the Clayton and Bulwer treaty was to guaranty the free and common use of the contemplated ship-canal across the Isthmus of Darien, and to secure such use to all nations by mutual treaty stipulations to that effect, there were other and highly important objects sought to be accomplished by that convention. The stipulation regarded most of all, by the United States, is that for discontinuing the use of her assumed protectorate of the Mosquito Indians, and with it the removal of all pretext whatever for interfering with the territorial arrangements which the Central American States may wish to make among themselves. It was the intention, as it is obviously the import, of the treaty of April 19, 1850, to place Great Britain under an obligation to cease her interpositions in the affairs of Central America, and to confine herself to the enjoyment of her limited rights in the Belize. She has, by this treaty of 1850, obligated herself not to occupy or colonize any part of Central America, or to exercise any dominion therein. Notwithstanding these stipulations, she still asserts the right to hold possession of, and to exercise control over, large districts of that country and important islands in the Bay of Honduras, the unquestionable appendages of the Central American States. This jurisdiction is not less mischievous in its effects, nor less objectionable to us, because it is covertly exercised (partly, at least) in the name of a miserable tribe of Indians, who have, in reality, no political organization, no actual government, not even the semblance of one, except that which is created by British authority and upheld by British power.

This anomalous state of things is exceedingly annoying to the States of Central America, and but little less so to the United States; for through the Bay of Honduras and across some of these States lies one of the most desirable routes to our possessions on the Pacific. This interference, it will be recollected, did not assume a marked character until after our acquisition of California.

Great Britain should be frankly assured that the policy to which I have alluded, and to which the United States mean to adhere, is exclusively political. As relates to commerce, this government neither aims at nor desires any advantage, in our intercourse with

the nations on this continent, which it would not willingly see extended to the whole world.

The object which it is hoped you may be able to accomplish is to induce Great Britain to withdraw from all control over the territories and islands of Central America, and, if possible, over the Belize also, and to abstain from intermeddling with the political affairs of the governments and people in that region of the world. This object is the more earnestly desired by the United States, as it is apparent that the tendency of events in that quarter is to give a foothold to British power there, in contravention of the policy which this government is resolved to sustain.

With your ample knowledge of the facts, it is believed that it will be easy for you to satisfy the government of Great Britain that it has no right to intervene in the political affairs of Central America, founded upon any dominion she can fairly claim in any part thereof, and that no obligation of duty or interest is imposed upon her to become a volunteer in the matter.

It is true she has some rights, as I have before stated, in the Belize; but when restricted to proper limits, no part of it is in Central America. These rights are, however, very few, as will be perceived by the second and third articles of the treaty between her and Spain, dated the 14th of July, 1786. The second article defines the extent of the district upon which British subjects may enter for the purposes specified in the third article, which contains an express admission that the Belize then belonged to the crown of Spain; and in it Great Britain stipulates in no ambiguous terms that her subjects, who have the right to enter it to cut dye-wood and mahogany, shall not use this limited right as a pretext for establishing "in that country any plantation of sugar, coffee, cacao, or other kind of articles, or any kind of fabric or manufacture, by means of mills or machinery, whatsoever," with the exception of saw-mills for cutting the wood which they have permission to take from that district of country. To enter into the country upon such conditions, for the single purpose granted, the British right cannot be well questioned; but this right is understood to be now of very little value, and, possibly, as a matter of interest and good policy, Great Britain may be willing to renounce it entirely; but her pretensions beyond this right cannot be regarded in any other light than as encroachments which ought to be abandoned. To show that her privilege is thus circumscribed, nothing more is necessary than to read the first article of the treaty to which I have alluded. Though a labored attempt has been made to pervert it, the language is too precise and explicit to give plausibility to such an effort.

That article stipulates (I quote the language of the treaty) that "his Britannic Majesty's subjects, and the other colonists who have hitherto enjoyed the protection of England, shall evacuate the country of the Mosquitos, as well as the continent in general and the islands adjacent, without exception, situated beyond the line hereinafter described as what ought to be the frontier or the extent of country granted by his Catholic Majesty to the English for the uses specified in the 3d article of the present convention, and in addition to the

country already granted to them (the Belize) in virtue of the stipulations agreed upon by the commissioners of the two crowns in 1783."

After reading the treaties with Spain of 1783 and 1786, in which Great Britain renounces, in terms the most explicit and comprehensive in the English language, all right to any territorial possessions in any part of Central America, all sovereign rights in behalf of the Mosquitos, and all claim to a protectorate over that horde of savages, it would seem to be useless to go beyond those treaties for facts to explode the pretensions she now asserts for herself in regard to this protectorate. Clear as both of these treaties are against such pretensions, it is nevertheless true that one of her Britannic Majesty's late principal secretaries of state for foreign affairs, Lord Palmerston, has endeavored to pervert, and by construction to render them meaningless, in the same manner that her present secretary attempts to render ineffective the treaty with the United States of the 19th of April, 1850. The boldness of the attempt with respect to the treaty of 1786, and its ill success, is shown by a proceeding in relation thereto in the British Parliament within one year after it was concluded.

The record of this proceeding is not found in the more general repository of parliamentary debates, "Hansard's Collection," and it could not have been in the recollection of Lord Palmerston when he wrote his famous letter upon this treaty and that of 1783, addressed to Señor Castillon, in 1849. As this proceeding shows the groundlessness of the claim then, as now, set up to this protectorate, and all other British claims in Central America, I deem it proper to present herein a succinct account of it.

On the 26th of March, 1787, a motion was made in the House of Peers by Lord Rawdon, "that the terms of the convention of July 14th, 1786, do not meet the favorable opinion of this House." On this motion a long debate ensued between Lords Rawdon, Carlisle, Stormont, Hawke, and Porchester, in support of the motion, and the Duke of Manchester, who negotiated the treaty of 1783, the Marquis of Carmarthen, secretary for foreign affairs, who negotiated the convention of 1786, and the Lord Chancellor, the celebrated Thurlow.

Lord Rawdon, on introducing his motion, stated "that the Mosquito shore, given up to Spain by the treaty of 1786, had been for more than a century in the possession of Great Britain; that it consisted of a territory of between four and five hundred miles in length, and was nearly of the depth of one hundred miles inland from the sea; that there were on it various settlements, and that the residents, at the time of its cession, consisted of near one thousand five hundred British subjects, including whites, male and female, persons of mixed color, and their slaves; that a regular form of government had been established on it many years since, consisting of a council, &c.; that it was a settlement of great value and importance to this country, and that our claim to it was as good as our claim to the island of Jamaica." In support of these assertions, his lordship produced various documents from the governor and assembly of the island of Jamaica and other corroborating papers. In exchange for this valuable settlement, he said, the British ministers had contented themselves with accepting a narrow slip of territory of between eleven and twelve miles in ex-

tent only. Lord Rawdon then proceeded to censure the ministers, especially for the fourteenth article of the convention, by which the King of Spain promises not to exercise any act of severity against the Mosquitos inhabiting in part the countries which are to be evacuated on account of the connexions which may have subsisted between the said Indians and the English, which his lordship declared to be "a most degrading humiliation of Great Britain."

The Earl of Carlisle, in the same manner, spoke of the Mosquito shore as a settlement that had been in the undisturbed possession of Great Britain for more than a century. He considered the ministers especially censurable "for having hung up the humiliation of Great Britain in every court in Europe, in an article so degrading to the national honor as the 14th article of the convention, because there could be no secret reason for such a mortifying sacrifice of the spirit of the country." Lord Stormont, likewise, particularly enlarged on the 14th article as an unnecessary degradation of the country; and he said "the Mosquito Indians had proved themselves faithful allies, and had invariably adhered to the interests of Great Britain." He contended that "they were an independent people, and that we had no right whatever to deliver them over to the Spanish yoke."

On the part of the ministry, the Duke of Manchester and the Marquis of Carmarthen said very little more than in support of their own personal agency in the treaty of 1783, and the convention of 1786; the defence being left to the lord chancellor, the champion of the administration, who left the woolsack; and in a most masterly manner answered the various arguments that had been urged in support of the motion.

He began with declaring that "he had expected to have heard the question spoken to with that degree of explicitness and candor that belonged to it. He had looked for more accuracy of description, in point of geographical character, than had been attempted. The Mosquito shore had been talked of as a tract of country extending between four and five hundred miles, without the smallest mention of the swamps and morasses with which it was interspersed, nor any allowance for the parts of it that were actually impossible to be either cultivated or inhabited. With regard to settlements, it would be imagined, by those who were strangers to the fact, that there had been a regular government, a regular council, and established laws peculiar to the territory; when the fact was, there neither had existed one nor the other." His lordship went into the history of the settlement, tracing it down from the year 1650 to the year 1777, mentioning Lord Godolphin's treaty, and all its circumstances, and deducing arguments from each fact he mentioned, to prove that the Mosquito shore never had been fairly deemed to be a British settlement; but that a detachment of soldiers had been landed from the island of Jamaica, who had erected fortifications, which had been afterwards abandoned by order of the government at home. He instanced the transactions on the subject of the peace of Paris, in 1763, when Governor Lyttleton governed Jamaica, and enlarged upon them to show that this country, by the peace of Paris, had renounced whatever

claim she might before that period have fancied she had a right to maintain ; and had given a fresh proof of her having done so, in the year 1777, when Lord George Germaine, the secretary of the American department, sent out Mr. Lawrie to the Mosquito shore to see that the stipulations of that treaty between this country and Spain were carried fully into execution. His lordship enlarged very much on these particulars ; and after enforcing and applying them to the arguments that had been urged in defence of the motion, proceeded to notice what Lord Carlisle had said on the delicacy of questions of that sort, declaring “ that he had been happy to hear the matter so judiciously observed upon. His lordship said he should have been extremely glad if the whole grounds of the transactions could, with prudence and propriety, have been gone into ; but as that could not be done, he must meet the matter as he found it. With regard to the degradation of the country that the 14th article was pretended to hold out, he denied the fact. The Mosquitos were not our allies, they were not a people we were bound by treaty to protect, nor were there anything like the number of British subjects there that had been stated ; the number having been, according to the last report from thence, only 120 men, and 16 women. The fact was, we had procured (by contract, if the noble lord pleased) a stipulation that the king of Spain would not punish those British subjects, and the Mosquitos, who had possessed themselves improperly of the rights belonging to the Spanish crown, and, in consequence of such irregular possession, had persisted for a course of time, but with frequent interruption, in the enjoyment of those rights. His lordship repelled the argument that the settlement was a regular and legal settlement with some sort of indignation ; and, so far from agreeing, as had been contended, that we had uniformly remained in the quiet and unquestionable possession of our claim to the territory, he called upon the noble Viscount Stormont to declare, as a man of honor, whether he did not know the contrary.”

The purport of Lord Stormont's answer is not given. Lord Rawdon, however, defended his motion, and produced some documents by General Dalling, when governor of Jamaica, to prove that a superintendent had been sent over to the settlement on the Mosquito shore, at that time, with a view to form a government.

The lord chancellor replied that he was aware of the application for a charter ; but he wished the noble lord had mentioned the answer that was given to that application when it was made. His lordship said “ the having sent a superintendent over with a view to the establishment of a regular council, &c., did not, by any means, prove that the government at home had countenanced the scheme. He referred the noble lord to what had been before stated relative to the conduct of Governor Lyttleton, in 1763, and of Lord George Germaine, in 1777, as an ample proof that, let what would have been the state of the Mosquito shore, or the opinion of this country, in 1744 or 1748, the idea of settling there had been changed completely since, and the fortifications recently abandoned and withdrawn.” After some further debate, (the particulars of which are not given,) the question was

taken and decided against Lord Rawdon's motion to condemn the convention by a vote of fifty-three to seventeen.*

Nothing could be more fatal—not the treaty of 1786 itself—to the pretensions set up by Great Britain for herself and the Mosquito Indians, than this debate and the vote on the motion to censure the treaty of 1786. The lords who supported the motion of censure on the administration, for having made the treaty, assert, it is true, that Great Britain and her ally, the Mosquitos, had rights before the treaty of 1786, but admit that these rights were given up by that treaty. This position destroys the pretensions of Great Britain, both for herself and the Mosquitos, of having rights there after that treaty. On the other hand, Lord Thurlow, in his defence of the administration, denied all claims on the part of the Mosquito Indians, as well as on the part of Great Britain, except what was given by the clause relative to the Belize. His position, which was concurred in by nearly the whole house of lords, is therefore equally fatal to these pretensions of the British government. In one view or the other, the vote of the whole house of lords is an acknowledgment that Great Britain, after 1786, had no rights whatever in Central America, or in that vicinity, except the limited usufruct to a small tract of country—the Belize—not claimed as a part of Central America, and that the Mosquito Indians had no sovereign rights to any territory whatever.

The acts of Parliament show that Great Britain had no dominion there—not even in the Belize; and by four treaties, three with Spain and one with the United States, (that of the 19th of April, 1850,) she has precluded herself from interposing in the affairs of Central America. I therefore trust you will encounter but little difficulty in inducing her to abandon unfounded pretensions, and to respect these solemn treaty stipulations.

The whole Central American question, so far as Great Britain has seen fit to connect herself with it, is entirely confided to your management, under such instructions as you may from time to time desire, or such as the President may consider himself called upon to furnish, in the progress of the discussions which may arise thereon.

* * * * *

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

JAMES BUCHANAN, Esq., &c., &c., &c.

Mr. Marcy to Mr. Buchanan.

[No. 11.]

DEPARTMENT OF STATE,
Washington, September 12, 1853.

SIR: Your two despatches, No. 3, (July 27,) and No. 4, (August 24,) have been received. I herewith transmit to you the President's full power to conclude a treaty with Great Britain in regard to the Central American questions. A copy of the despatch of her Majesty's

*This debate is found more at large in Parliamentary Register, 1787, vol. 22.

principal secretary of state for foreign affairs to Mr. Crampton, containing the "overtures," &c., dated January 19, 1853, was forwarded to you from this department on the 30th of July last. I do not find any other document on file in the State Department containing overtures, &c., on the Central American questions; but it is probable that in the conferences between my predecessors and the British minister, in relation to the Mosquito protectorate and the affairs of San Juan, (Greytown,) overtures may have been suggested by him.

The general views of the President in regard to Central American affairs were presented in the first instructions with which you were furnished. The President did not deem it necessary to be more explicit as to the points of difference which might arise until he was fully possessed of the views of her Majesty's government. The main object to be accomplished is to induce the British government to withdraw from all interference in the political affairs of the Central American states and the adjacent islands.

It is quite evident, judging by communications received from her Majesty's government, particularly in regard to the difficulties at San Juan de Nicaragua, that a difference of opinion between it and the United States exists as to the construction and effect of the Clayton and Bulwer treaty; but how wide that difference is, and on what particular points it is raised, have not yet been very clearly disclosed. This difference will be, as the President presumes, fully known when these matters shall be brought by you under the consideration of the British government.

Your intimate knowledge of the subject in all its bearings, and of the general views of the President which are embodied in your instructions, will enable you to cover the whole American ground in opening the negotiation. How much will be conceded and how much contested by Great Britain remains to be seen. Until points of difference are discussed, and the views opposed to those here entertained are fully considered, the President does not deem it advisable to fix on *ultimata*. These, if desired in a more advanced state of the negotiation, will be furnished.

In relation to the Belize I believe your instructions are sufficiently explicit. To the territorial extent, and for the limited uses, described in her treaty of 1786 with Spain, Great Britain has a right to continue in possession of that country. Though the United States cannot claim as a matter of right that she shall altogether withdraw from Belize, it is a very important object to prevail on her to give up that territory, now regarded as of very little value. This government is not aware that Great Britain claims to have full sovereignty over it; but, if she does, the United States would contest that claim, and regard the assertion of it as an infringement of the Monroe doctrine—a doctrine which it is the policy of the President to maintain.

I believe Great Britain has never defined the character of her claim to possess what is called "the colony of the Bay Islands." It does not appear to be one of her organized colonies. She has not, in explicit language, claimed sovereignty over it, though her acts have indicated such a purpose. Whatever may have been her rights or

pretension to rights over this colony, they were all given up, according to the view here taken of the subject, by the Clayton and Bulwer treaty.

The President cannot conceive that Great Britain can have any plausible grounds for excepting this possession from the operation of that treaty, and he is quite sure she can allege none to which he could concede; yet he thinks it the wiser course to give her an opportunity to explain her views thereon before presenting a solemn and formal protest against her further occupancy of that colony. The President expects that you will treat this subject in such a manner as to leave no doubt on the minds of her Majesty's ministers that the abandonment of that colony will be insisted on by the United States.

It is presumed that the only part of that colony to which England will be disposed to attach much value, or have any inducement to retain, is the island of Ruatan. From an intimation made to me, it may be that she will take the position that this island does not belong to any of the Central American States, but is to be regarded in the same condition as one of the West India islands. By reference to the treaties between Great Britain and Spain, you will find this island clearly recognised as a Spanish possession, and a part of the old viceroyalty of Guatemala.

Should an attempt be made to distinguish between this island and the States of Central America, upon the ground above suggested, it is probable that more full information than we now have in regard to that subject may be obtained from, or through, Mr. Molina, the diplomatic representative near this government from Costa Rica and Guatemala. On receiving an intimation from you that further information thereon may be necessary, every effort will be here made to procure and forward it to you.

A copy of the convention of the 8th of February last will be forwarded to you.

With this will be sent a copy of the Congressional Globe, if it can be procured, containing the debates of the last session of Congress, and the called session of the Senate.

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

JAMES BUCHANAN, Esq., &c., &c., &c.

Mr. Marcy to Mr. Buchanan.

[No. 21.]

DEPARTMENT OF STATE,
Washington, December 1, 1853.

SIR: Your despatch (No. 16) of the 12th ultimo came to hand yesterday, and was laid before the President. He approves entirely of the suggestion made by you to Lord Clarendon to place the Mosquito Indians in the same relation to Nicaragua that our own Indians sustain to the United States, since it is in strict accordance with the views of this government on that subject, as will be seen from the following

extract from the Department's instructions to Mr. Borland, under date of the 17th of June last :

" Admitting these Indians to be what the United States and Nicaragua regard them—a savage tribe, having only possessory rights to the country they occupy, and not the sovereignty of it—they cannot fairly be required to yield up their actual possessions without some compensation. Might not this most troublesome element in this Central American question be removed by Nicaragua, in a way just in itself, and entirely compatible with her national honor? Let her arrange this matter as we arrange those of the same character with the Indian tribes inhabiting portions of our own territory. I think it would be proper for you to urge upon Nicaragua this view of the subject. An inconsiderable annuity secured to the Mosquitos for their right of occupancy to the country in their possession given up to Nicaragua, would, I believe, cause the British government to abandon their protectorate over them; assurance of this is given to the United States. Such a course would not, in my opinion, be an acknowledgment directly or by implication of the rightful interference by the government of Great Britain in the Mosquito question."

The sequel of the agreement between Messrs. Webster and Cramp-ton, about which inquiry is made by you, was an instruction to Mr. Kerr, the chargé d'affaires of the United States to Nicaragua, directing him to present the agreement to the Nicaraguan government for its assent thereto. He complied with the instruction, but the application was rejected. Mr. Walsh was also sent to the republic of Costa Rica, as a special agent of this government, with instructions to present the agreement to the consideration of the government of that republic. This he did, and it was accepted by the Costa Rican government.

The Department has no spare copy of the document containing the letter of Lord Palmerston to Mr. Castellon, asked for by you; but if you will turn to the tenth volume of Executive Documents, 1st session 31st Congress, page 304, the letter referred to may there be found.

As it regards your inquiry about the number of the Mosquito Indians, I am unable to ascertain, with any degree of certainty, what that number is.

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

JAMES BUCHANAN, Esq., &c., &c., &c.

Mr. Buchanan to Mr. Marcy.

[Extracts.]

[No. 19.]

LEGATION OF THE UNITED STATES,
London, January 5, 1854.

SIR: I have the honor to acknowledge the receipt of your despatches Nos. 20, 21, 22, and 23, of 19th November, and 1st, 3d, and 16th December, respectively.

* * * * *

I have not deemed it advisable to press the Central American negotiation since my last interview with Lord Clarendon in November. The causes for this delay have been the unsettled condition of the British cabinet in consequence of the resignation of Lord Palmerston, and his subsequent withdrawal of that resignation, the state of the Russo-Turkish question, to which the ministry have been devoting themselves fruitlessly, as it is now believed, to the task of preventing a war between Great Britain and Russia, and the desire which I felt to receive your instructions in regard to the suggestion which I had made to Lord Clarendon, that the Mosquito Indians might be placed in the same relation to Nicaragua that our own Indians sustain to the United States. Your satisfactory despatch (No. 21) has removed all doubts on this latter subject.

I have reason to believe that my omission to press the Central American questions at the present most important crisis between Great Britain and Russia has been properly appreciated by Lord Clarendon.

On Monday last, however, I addressed his lordship a note, requesting an interview, to which I have received his answer, appointing to-morrow (Friday,) at half-past three o'clock, for our meeting—too late for the next steamer. Indeed, I had reason to expect that ere this he would himself have taken the initiative, and have invited me to an interview.

* * * * *

I am, sir, &c.,

JAMES BUCHANAN.

Hon. W. L. MARCY, &c., &c., &c., Washington.

Mr. Buchanan to Mr. Marcy.

[Extracts.]

[No. 20.]

LEGATION OF THE UNITED STATES,
London, January 10, 1854.

SIR: I had a long interview on Friday last with Lord Clarendon at the Foreign Office. We had much desultory and pleasant conversation on various topics; but in my report I shall confine myself to the substance of what passed between us in relation to the pending questions between the two governments.

* * * * *

After our conversation had ended on the fishery and reciprocity questions, he informed me that he had presented my suggestion to the cabinet, that Nicaragua should treat the Mosquitos within her limits as Great Britain and the United States treated their own Indians, under similar circumstances; and they thought, as he had done, that it was highly reasonable. I told him I was glad to learn this, and was happy to inform him I could now state, from advices received by the last steamer, that you were of the same opinion.

He then asked, in what manner shall we carry this into effect? and intimated that the appointment of commissioners by the two govern-

ments for this purpose might be the best mode of proceeding. I told him I was not then prepared to express an opinion on the subject, but would take it into consideration. The proportion of territory to be occupied by the Mosquitos until their title was extinguished by Nicaragua, ought to depend very much upon their number. Lord John Russell had stated this to be thirty or forty thousand, whilst from my information, which was, however, vague, it did not exceed as many hundreds. He replied, that Mr. Green, the British consul and agent at Bluefields, was now in London, and had mentioned to him that my estimate of their number was probably correct in regard to the Mosquitos north of the San Juan, though there might be a thousand more; but that the Mosquitos south of the San Juan were so numerous as to render Lord John's estimate of the whole not excessive. I told him I had never heard that any portion of this tribe resided in Costa Rica, and I thought there must be some mistake in the statement of Mr. Green. He then asked what we should do with the grants of land which had been made to individuals by the king of the Mosquitos; and I answered that under the law of all European nations since the discovery of America, as well as by the uniform practice both of Great Britain and the United States, such grants made by Indians were absolutely void. I also stated to him, somewhat in detail, the decision on this point made by the Supreme Court of the United States in the case of *Johnson vs. McIntosh*, (8 Wheaton, 543,) to which he appeared to listen with marked attention.

After this we had a discursive and rambling conversation, embracing the Ruatan and Belize questions, the Clayton and Bulwer treaty, and several other matters which I do not propose to detail. In the course of it he stated distinctly that this treaty was, in their opinion, entirely prospective in its operation, and did not require them to abandon any of their possessions in Central America. At this I expressed my astonishment, and we discussed the point in an earnest but good-natured manner.

In regard to Ruatan, he said he had the papers in a box before him to prove their title to that island; but it would consume too much time to read them, and therefore he had thought of submitting his views to me respecting it in writing. This suggestion pleased me much, as I desired to present to his lordship a memorandum which I had prepared, embracing our whole case in Central America. I told him, therefore, I should be much gratified to receive his views in writing; and at the same time informed him, that without changing our mode of personal conference, I desired also to deliver him a written memorandum to which he might at all times refer, containing a statement of the case on the part of my government. With this he expressed himself to be much pleased. I am sorry that I shall not be able to furnish you a copy of this memorandum by the present steamer.

One incident may be worth particular mention. In the course of the conversation, he said the Bay Islands were but of little value; but if British honor required their retention they could never be surrendered. I made some playful remark in reference to the idea of British honor being involved in so small an affair. He then became quite earnest on the point of honor, which might, he observed, be as much

involved in subjects of little as of great value. To this I assented, but said, that when the construction of a treaty was really doubtful, which I did not admit upon the present occasion, and when the friendly relations between two great countries were at stake, there could in such a case be no point of honor involved in the one yielding to the other what was admitted to be of but little value. He replied that in this view of the case I might be correct.

In regard to Belize, there was not the least appearance of yielding on the part of his lordship. He repudiated the idea with some warmth that any person should suppose they had surrendered this settlement under the Clayton and Bulwer treaty.

* * * * *

The time has therefore arrived when it becomes indispensable that I should receive the President's instructions on this point. In forming his opinion, it may be worthy of consideration, that the British have been in the actual possession of Belize, under treaty, for more than seventy years; that no period was fixed when they should withdraw from this possession; that Spain declared war against Great Britain on the 11th October, 1796; that an attack was made from Yucatan on Belize in 1798, which was repelled by the British settlers; and that for nearly a quarter of a century it has been under a regular colonial government, without attracting the notice of the United States.

In any event, I shall do my whole duty in first urging their withdrawal from the whole colony; and if that should not prove successful, then from the portion of it south of the Sibun. But what am I to do in case I shall be unsuccessful in both or either of these particulars? I shall await your answer with considerable anxiety.

When I pointed out to Lord Clarendon on Bailey's map, which lay before him, the extent of the encroachments which British settlers had made beyond the treaty limits, his only answer was, in a tone of pleasantry, that we ought not to complain of encroachments, and instanced our acquisition of Texas. I then took occasion to give him information on this subject, for which he thanked me, and said that he had never understood it before.

Returning again to the Mosquitos, am I to consent that they shall continue in the occupation of the territory assigned to them by the agreement between Messrs. Webster and Crampton, of April 30, 1852, until their title shall be extinguished by Nicaragua? Whether this assignment be unreasonable or not would depend much upon their number. You can doubtless ascertain at Washington whether any considerable number of the tribe inhabit the country south of the San Juan, as stated by Mr. Green.

In regard to the Mosquitos, the question of the greatest difficulty would seem to be, in what manner can Great Britain and the United States interfere, as suggested by Lord Clarendon, to prevent Nicaragua from depriving these Indians of their right of occupancy without a fair equivalent. It would seem that this could be best accomplished by a treaty with Nicaragua. The whole detail presents embarrassments

which will be annoying without the consent of Nicaragua, and yet I am persuaded the British government care little or nothing for this consent. They have evidently formed a very unfavorable opinion of that State, and greatly prefer Costa Rica. It would appear, from what his lordship informed me, Mr. Marcoleta had told Mr. Crampton that Costa Rica is jealous of the influence of Nicaragua with the United States.

You would naturally desire to know something of his majesty the present king of the Mosquitos. I had, on a former occasion, stated to Lord Clarendon that he was drunken and worthless. At this interview his lordship informed me I was mistaken; that the present king was a decent and well-behaved youth of between twenty-two and twenty-three, who resided in Mr. Green's family, though he believed his late majesty, to whom I had doubtless referred, was a bad fellow.

Yours, very respectfully,

JAMES BUCHANAN.

Hon. WM. L. MARCY,
Secretary of State.

Statement for the Earl of Clarendon.

When the negotiations commenced, which resulted in the conclusion of the Clayton and Bulwer convention of April 19, 1850, the British government were in possession of the whole extensive coast of Central America, sweeping round from the Rio Hondo to the port and harbor of San Juan de Nicaragua, except that portion [of] it between the Sarstoon and Cape Honduras, together with the adjacent Honduras island of Ruatan.

The government of the United States seriously contested the claim of Great Britain to any of these possessions, with the single exception of that part of the Belize settlement lying between the Rio Hondo and the Sebun, the usufruct of which, for a special purpose, and with a careful reservation of his sovereign rights over it, had been granted by the king of Spain to the British under the convention of 1786.

The progress of events had rendered Central America an object of special interest to all the commercial nations of the world, on account of the railroads and canals then proposed to be constructed through the isthmus, for the purpose of uniting the Atlantic and Pacific oceans.

Great Britain and the United States, both having large and valuable possessions on the shores of the Pacific and an extensive trade with the countries beyond, it was natural that the one should desire to prevent the other from being placed in a position to exercise exclusive control, in peace or in war, over any of the grand thoroughfares between the two oceans. This was a main feature of a policy which dictated the Clayton and Bulwer convention. To place the two nations on an exact equality, and thus to remove all causes of mutual jealousy, each of them agreed by this convention never to occupy, fortify, or exercise dominion over any portion of Central America.

Both parties adopted this self-denying ordinance for the purpose of terminating serious misunderstandings then existing between them, which might have endangered their friendly relations.

Whether the United States acted wisely or not in relinquishing their right as an independent nation to acquire territory in a region on their own continent, which may become necessary for the security of their communication with their important and valuable possessions on the Pacific, is another and a different question. But they have concluded the convention; their faith is pledged; and under such circumstances they never look behind the record.

The language of the convention is, properly, mutual, though in regard to the United States it can only restrain them from making future acquisitions, because it is well known that, in point of fact, they were not in the occupation of a foot of territory in Central America. In reference to Great Britain the case is different, and the language applies not only to the future, but the past; because she was then in the actual exercise of dominion over a very large portion of the eastern coast of Central America. Whilst, therefore, the United States has no occupancy to abandon, under the convention, Great Britain had extensive possessions to restore to the States of Guatemala, Honduras, and Nicaragua.

And yet the British government, up till the present moment, have not deemed it proper to take the first step towards the performance of their obligations under this convention. They are still in the actual occupancy of nearly the whole coast of Central America, including the island of Ruatan, in the very same manner that they were before its conclusion. This delay, on their part, surely cannot proceed from any obscurity in the language of the convention.

The first article declares that the governments of the United States and Great Britain agree that neither will "occupy or fortify or colonize, or assume or exercise any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America." And from abundant caution, in view of the Mosquito protectorate, the article proceeds as follows: "Nor will either make use of any protection which either affords or may afford, or any alliance which either has or may have, to or with any State or people for the purpose of * * * occupying, fortifying, or colonizing Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America, or of assuming or exercising dominion over the same." This rendered into plain English is, that the parties shall not exercise dominion over any part of Central America, either directly or indirectly, either by themselves or in the name of others.

It has been said that the first article of the convention acknowledged, by implication, the right of Great Britain to the Mosquito protectorate—a right which the United States have always contested and resisted; a right which would continue to Great Britain that entire control over the Nicaragua ship-canal, and the other avenues of communication between the two oceans, which it was the very object of the convention to abolish, and to defeat that equality between the parties in Central America, which it was its special purpose to secure.

Surely the United States could never have been guilty of such a suicidal absurdity.

But admitting, for the sake of argument merely, that the United States have acknowledged the existence of this protectorate: it would be difficult, restricted in its use as it has been by the convention, to conceive for what object of the least importance it could be employed. It assuredly could not be for the purpose of "occupying" "the Mosquito coast," or "of assuming or exercising dominion over the same," because this has been expressly prohibited by the convention.

Great Britain has not even retired from the island of Ruatan, in obedience to the convention. Here no question can possibly arise from any alleged Mosquito protectorate. This is clearly a Central American island, belonging to the State of Honduras, and but thirty miles distant from her port of Truxillo. If the convention plainly embraces any object whatever, this must be Ruatan. And yet Great Britain has not only continued to occupy this island, but since the date of the convention she has actually established a colonial government over it. And not over it alone, but, adding thereto five other neighboring islands on the Central American coast, has converted them all into the British colony of the "Bay islands." Public sentiment is quite unanimous, in the United States, that the establishment of this colony is a palpable violation both of the letter and spirit of the Clayton and Bulwer convention.

Ruatan is well known to be an island of great value and importance, on account of its excellent harbors, which are rare along that coast. Indeed, it has been described by a Spanish author "as the key of the Bay of Honduras, and the focus of the trade of the neighboring countries." Such is its commanding geographical position that Great Britain, in possession of it, could completely arrest the trade of the United States in its passage to and from the isthmus. In vain may the convention have prohibited Great Britain from erecting or maintaining any fortifications commanding the Nicaragua canal, or in other portions of Central America, if she shall continue to exercise dominion over "the Bay islands."

The United States now only ask that this convention shall be faithfully executed by both parties. They wish that every avenue of communication across the isthmus shall be opened, not merely for their own benefit, but for that of Great Britain and the whole world. In this respect they would not, if they could, acquire any peculiar advantages, because these might arouse the jealousy and distrust of other nations.

The rights and duties of the respective parties have been ascertained and determined by the convention itself; but as the justice of the previous claim of Great Britain to her possessions in Central America has been since asserted in high quarters, it may not be improper to present the views of the government of the United States upon this subject.

It need scarcely be repeated that the United States have always denied the validity of this claim. They believe that Great Britain has surrendered nothing under the convention which she would not voluntarily have done, from her own magnanimity and sense of justice, as

soon as the question was brought home to her serious consideration. It would be a vain labor to trace the history of the connexion of Great Britain with the Mosquito shore, and other portions of Central America, previous to her treaties with Spain of 1783 and 1786. This connexion doubtless originated from her desire to break down the monopoly of trade which Spain so jealously enforced with her American colonies, and to introduce into them British manufactures. The attempts of Great Britain to accomplish this object were pertinaciously resisted by Spain, and became the source of continual difficulties between the two nations. After a long period of strife, these were happily terminated by the treaties of 1783 and 1786, in as clear and explicit language as was ever employed on any similar occasion; and the history of the time renders the meaning of this language, if possible, still more clear and explicit.

The sixth article of the treaty of peace of September 3, 1783, was very distasteful to the king and cabinet of Great Britain. This abundantly appears from Lord John Russell's "Memorials and Correspondence of Charles James Fox." The British government, failing in their efforts to have this article deferred for six months, finally yielded a most reluctant consent to its insertion in the treaty.

Why this reluctant consent? Because the 6th article stipulates that, with the exception of the territory between the river Wallis or Belize, and the Rio Hondo, within which permission was granted to British subjects to cut logwood, "all the English who may be dispersed in any other parts, whether on the Spanish continent, (*'Continent Espagnol,'*) or in any of the islands whatsoever, dependent on the aforesaid Spanish continent, and for whatever reason it might be, without exception, shall retire within the district which has been above described, in the space of eighteen months, to be computed from the exchange of ratifications." And the treaty further expressly provides, that the permission granted to cut logwood "shall not be considered as derogating in any wise from his (Catholic majesty's) rights of sovereignty" over this logwood district; and it stipulates, moreover, "that if any fortifications should actually have been heretofore erected, within the limits marked out, his Britannic majesty shall cause them all to be demolished, and he will order his subjects not to build any new ones."

But notwithstanding these provisions, in the opinion of Mr. Fox, it was still in the power of the British government "to put our [their] own interpretation upon the words '*Continent Espagnol,'* and to determine upon prudential considerations whether the Mosquito shore comes under the description or not."

Hence the necessity for negotiations which should determine precisely and expressly the territory embraced by the treaty of 1783. These produced the convention of the 14th July, 1786, and its very first article removed every doubt on the subject. This declares that "His Britannic majesty's subjects, and the other colonists who have hitherto enjoyed the protection of England, shall evacuate the country of the Mosquitos, as well as the continent in general and the islands adjacent, without exception," situated beyond the new limits prescribed by the convention, within which British subjects were to be

permitted to cut not only logwood but mahogany and all other wood ; and even this district is " indisputably acknowledged to belong of right to the crown of Spain."

Thus what was meant by the "*Continent Espagnol*," in the treaty of 1783, is defined beyond all doubt by the convention of 1786, and the sovereignty of the Spanish king over the Mosquito shore, as well as over every other portion of the Spanish continent and the islands adjacent, is expressly recognised.

It was just that Great Britain should interfere to protect the Mosquito Indians against the punishment to which they had exposed themselves as her allies from their legitimate and acknowledged sovereign. The 14th article of the convention, therefore, provides that " his Catholic majesty, prompted solely by motives of humanity, promises to the king of England that he will not exercise any act of severity against the Mosquitos inhabiting in part the countries which are to be evacuated by virtue of the present convention, on account of the connexions which may have subsisted between the said Indians and the English ; and his Britannic majesty, on his part, will strictly prohibit all his subjects from furnishing arms or warlike stores to the Indians in general situated upon the frontiers of the Spanish possessions."

British honor required that these treaties with Spain should be faithfully observed, and from the contemporaneous history no doubt exists but that this was done ; that the orders required by the 15th article of the convention were issued by the British government, and that they were strictly carried into execution.

In this connexion a reference to the significant proceedings in the House of Lords on March 26, 1787, ought not to be omitted. On that day a motion was made by Lord Rawdon, " That the terms of the convention of July 14, 1786, do not meet the favorable opinion of this House." The motion was discussed at considerable length and with great ability. The task of defending the ministry on this occasion was undertaken by Lord Chancellor Thurlow, and was most triumphantly performed. He abundantly justified the ministry for having surrendered the Mosquito shore to Spain, and proved that " the Mosquitos were not our allies ; they were not a people we were bound by treaty to protect." " His lordship repelled the argument, that the settlement was a regular and legal settlement, with some sort of indignation ; and so far from agreeing, as had been contended, that we had uniformly remained in the quiet and unquestionable possession of our claim to the territory, he called upon the noble Viscount Stormont to declare, as a man of honor, whether he did not know the contrary."

Lord Rawdon's motion to condemn the convention was rejected by a vote of 53 to 17.

It is worthy of special remark, that all sides of the House, whether approving or disapproving the convention, proceeded upon the express admission that it required Great Britain, employing its own language, to " evacuate the country of the Mosquitos." On this question the House of Lords were unanimous.

At what period, then, did Great Britain renew her claims to " the country of the Mosquitos, as well as the continent in general and the

islands adjacent, without exception?" It certainly was not in 1801, when under the treaty of Amiens she acquired the island of Trinidad from Spain, without any mention whatever of future acquisitions in America. It certainly was not in 1809, when she entered into a treaty of alliance, offensive and defensive, with Spain, to resist the Emperor Napoleon in his attempts to conquer the Spanish monarchy. It certainly was not in 1814, when the commercial treaties which had previously existed between the two powers, including, it is presumed, those of 1783 and 1786, were revived.

On all these occasions there was no mention whatever of any claims of Great Britain to the Mosquito protectorate, or to any of the Spanish American territories which she had abandoned.

It was not in 1817 and 1819, when acts of the British parliament (57 and 59 Geo. III) distinctly acknowledged that the British settlement at Belize was "not within the territory and dominion of his majesty," but was merely "a settlement for certain purposes in the possession and under the protection of his majesty;" thus evincing, with a determined purpose to observe, with the most scrupulous good faith, the treaties of 1783 and 1786 with Spain.

In the very sensible book of Captain Bonnycastle, of the corps of British royal engineers, on Spanish America, published at London in 1818, he gives no intimation whatever that Great Britain had revived her claim to the Mosquito protectorate. On the contrary, he describes the Mosquito shore as "a tract of country which lies along part of the northern and eastern shore of Honduras," which had "been claimed by the British." He adds, "the English held this country for eighty years, and abandoned it in 1787 and 1788."

Thus matters continued until a considerable period after 1821, in which year the Spanish provinces composing the captain-generalship of Guatemala asserted and maintained their independence of Spain. It would be a work of supererogation to attempt to prove, at this period of the world's history, that these provinces, having by a successful revolution become independent states, succeeded within their respective limits to all the territorial rights of Spain. This will surely not be denied by the British government, which took so noble and prominent a part in securing the independence of all the Spanish American provinces.

Indeed, Great Britain has recorded her adhesion to this principle of international law, in her treaty of the 26th December, 1826, with Mexico, then recently a revolted Spanish colony. By this treaty, so far from claiming any right beyond the usufruct, which had been conceded to her under the convention with Spain of 1786, she recognises its continued existence and binding effect as between herself and Mexico, by obtaining and accepting from the government of the latter a stipulation that British subjects shall not be "disturbed or molested in the peaceable possession and exercise of whatever rights, privileges, and immunities they have at any time enjoyed within the limits described and laid down" by that convention. Whether the former Spanish sovereignty over Belize, subject to the British usufruct, reverted of right to Mexico or to Guatemala may be seriously ques-

tioned ; but, in either case, this recognition by Great Britain is equally conclusive.

And here it may be appropriate to observe, that Great Britain still continues in possession, not only of the district between the Rio Hondo and the Sibun, within which the king of Spain, under the convention of 1786, had granted her a license to cut mahogany and other woods, but the British settlers have extended this possession south to the river Sarstoon, one degree and a half of latitude beyond "the limits described and laid down" by the convention. It is presumed that the encroachments of these settlers south of the Sibun have been made without the authority or sanction of the British crown, and that no difficulty will exist in their removal.

Yet, in view of all these antecedents, the island of Ruatan, belonging to the State of Honduras, and within sight of its shores, was captured in 1841 by Colonel McDonald, then her Britannic majesty's superintendent at Belize, and the flag of Honduras was hauled down and that of Great Britain was hoisted in its place. This small State, incapable of making any effectual resistance, was compelled to submit, and the island has ever since been under British control. What makes this event more remarkable is, that it is believed a similar act of violence had been committed on Ruatan by the superintendent of Belize in 1835 ; but, on complaint by the federal government of the Central American States, then still in existence, the act was formally disavowed by the British government, and the island was restored to the authorities of the republic.

No question can exist but that Ruatan was one of the "islands adjacent" to the American continent, which had been restored by Great Britain to Spain under the treaties of 1783 and 1786. Indeed, the most approved British gazetteers and geographers, up till the present date, have borne testimony to this fact, apparently without information from that hitherto but little known portion of the world, that the island had again been seized by her majesty's superintendent at Belize, and was now a possession claimed by Great Britain.

When Great Britain determined to resume her dominion over the Mosquito shore, in the name of a protectorate, is not known with any degree of certainty in the United States. The first information on the subject, in the Department of State at Washington, was contained in a despatch of the 20th January, 1842, from William S. Murphy, esq., special agent of the American government to Guatemala, in which he states that in a conversation with Colonel McDonald at Belize, the latter had informed him "he had discovered and sent documents to England, which caused the British government to revive their claim to the Mosquito territory.

According to Bonnycastle, the Mosquito shore "lies along part of the northern and eastern shore of Honduras," and, by the map which accompanies his work, extends no further south than the mouth of the river Segovia, in about 12° north latitude. This respectable author certainly never could have imagined that it extended south of San Juan de Nicaragua, because he describes this as the principal seaport of Nicaragua on the Caribbean sea ; says there are "three portages" between the lake and the mouth of the river, and "these

carrying-places are defended, and at one of them is the fort, San Juan, (called also the castle of Nuestra Señora,) on a rock, and very strong ; it has thirty-six guns mounted, with a small battery, whose platform is level with the water ; and the whole is enclosed on the land side by a ditch and rampart. Its garrison is generally kept up at a hundred infantry, sixteen artillerymen, with about sixty of the militia, and is provided with batteaux, which row guard every night up and down the stream."

Thus it appears that the Spaniards were justly sensible of the importance of defending this outlet from the lake of Nicaragua to the ocean, because, as Captain Bonnycastle observes: "This port (San Juan) is looked upon as the key of the Americas ; and with the possession of it and Realejo on the other side of the lake, the Spanish colonies might be paralyzed, by the enemy being then master of the ports of both oceans." He might have added, that nearly sixty years ago, on the 26th February, 1796, the port of San Juan de Nicaragua was established as a port of entry of the second class by the king of Spain.

Captain Bonnycastle, as well as the Spaniards, would have been greatly surprised had they been informed that this port was a part of the dominions of his majesty the king of the Mosquitos, and that the cities and cultivated territories of Nicaragua surrounding the lakes Nicaragua and Managua had no outlet to the Caribbean sea, except by his gracious permission. It was therefore with profound surprise and regret the government and people of the United States learned that a British force, on the 1st of January, 1848, had expelled the State of Nicaragua from San Juan, had hauled down the Nicaraguan flag, and had raised the Mosquito flag in its place. The ancient name of the town, San Juan de Nicaragua, which had identified it in all former time as belonging to Nicaragua, was on this occasion changed, and thereafter it became Greytown.

These proceedings gave birth to serious apprehensions throughout the United States, that Great Britain intended to monopolize for herself the control over the different routes between the Atlantic and the Pacific, which, since the acquisition of California, had become of vital importance to the United States. Under this impression, it was impossible that the American government could any longer remain silent and acquiescing spectators of what was passing in Central America.

Mr. Monroe, one of our wisest and most discreet Presidents, announced in a public message to Congress, in December, 1823, that "the American continents, by the free and independent condition which they have assumed and maintained, are henceforth not to be considered subjects for future colonization by any European powers."

This declaration has since been known throughout the world as the "Monroe doctrine," and has received the public and official sanction of subsequent Presidents, as well as of a very large majority of the American people.

Whilst this doctrine will be maintained, whenever in the opinion of Congress the peace and safety of the United States shall render this necessary, yet, to have acted upon it in Central America might have

brought us into collision with Great Britain—an event always to be deprecated, and, if possible, avoided.

We can do each other the most good and the most harm of any two nations in the world; and therefore it is our strong mutual interest, as it ought to be our strong mutual desire, to remain the best friends. To settle these dangerous questions, both parties wisely resorted to friendly negotiations, which resulted in the convention of April, 1850. May this prove to be instrumental in finally adjusting all questions of difficulty between the parties in Central America, and in perpetuating their peace and friendship!

Surely, the Mosquito Indians ought not to prove an obstacle to so happy a consummation. Even if these savages had never been actually subdued by Spain, this would give them no title to rank as an independent state, without violating the principle and the practice of every European nation, without exception, which has acquired territory on the continent of America. They all mutually recognised the right of discovery, as well as the title of the discoverer, to a large extent of interior territory, though at the moment occupied by fierce and hostile tribes of Indians.

On this principle the wars, the negotiations, the cessions, and the jurisprudence of these nations were founded. The ultimate dominion and absolute title belonged to themselves, although several of them, and especially Great Britain, conceded to the Indians a right of mere occupancy, which, however, could only be extinguished by the authority of the nation within whose dominions these Indians were found. All sales or transfers of territory made by them to third parties were declared to be absolutely void; and this was a merciful rule even for the Indians themselves, because it prevented them from being defrauded by dishonest individuals.

No nation has ever acted more steadily upon these principles than Great Britain, and she has solemnly recognised them in her treaties with the King of Spain of 1783 and 1786, by admitting his sovereignty over the Mosquitos.

Shall the Mosquito tribe of Indians constitute an exception from this hitherto universal rule? Is there anything in their character or in their civilization which would enable them to perform the duties and sustain the responsibilities of a sovereign State in the family of nations?

Bonnycastle says of them that they “were formerly a very powerful and numerous race of people, but the ravages of rum and the small-pox have diminished their numbers very much.” He represents them, on the authority of British settlers, as seeming “to have no other religion than the adoration of evil spirits.”

The same author also states that “the warriors of this tribe are accounted at fifteen hundred.” This possibly may have been correct in 1818, when the book was published, but at present serious doubts are entertained whether they reach much more than half that number.

The truth is, they are now a debased race, and are degraded even below the common Indian standard. They have acquired the worst vices of civilization from their intercourse with the basest class of the whites, without any of its redeeming virtues. The Mosquitos have been thus represented by a writer of authority who has recently enjoyed

the best opportunities for personal observation. That they are totally incapable of maintaining an independent civilized government is beyond all question. Then, in regard to their so-called king, Lord Palmerston, in speaking of him to Mr. Rives, in September, 1851, says: "They had what was called a king, who, by the bye," he added in a tone of pleasantry, "was as much a king as I or you." And Lord John Russell, in his despatch to Mr. Crampton of the 19th January, 1853, denominates the Mosquito government as "a fiction," and speaks of the king as a person "whose title and power are, in truth, little better than nominal."

The moment Great Britain shall withdraw from Bluefields, where she now exercises exclusive dominion over the Mosquito shore, the former relations of the Mosquitos to Nicaragua and Honduras, as the successors of Spain, will naturally be restored. When this event shall occur, it is to be hoped that these States, in their conduct towards the Mosquitos and the other Indian tribes within their territories, will follow the example of Great Britain and the United States. Whilst neither of these has ever acknowledged, or permitted any other nation to acknowledge, any Indian tribe within their limits as an independent people, they have both recognised the qualified right of such tribes to occupy the soil, and, as the advance of the white settlements rendered this necessary, have acquired their title by a fair purchase.

Certainly it cannot be desired that this extensive and valuable Central American coast, on the highway of nations between the Atlantic and the Pacific, should be appropriated to the use of three or four thousand wandering Indians as an independent state, who would use it for no other purpose than that of hunting and fishing and savage warfare. If such an event were possible, the coast would become a retreat for pirates and outlaws of every nation, from whence to infest and disturb the commerce of the world in its transit across the isthmus. And but little better would be its condition should a new independent state be established on the Mosquito shore. Besides, in either event, the Central American states would deeply feel the injustice which had been done them in depriving them of a portion of their territories. They would never cease in attempts to recover their rights, and thus strife and contention would be perpetuated in that quarter of the world, where it is so much the interest, both of Great Britain and the United States, that all territorial questions shall be speedily, satisfactorily, and finally adjusted.

JAMES BUCHANAN.

LONDON, *January 6, 1854.*

Mr. Buchanan to Mr. Marcy.

[Extract.]

[No. 31.]

LEGATION OF THE UNITED STATES,
London, May 5, 1854.

SIR: Late on Tuesday evening last, I received the long promised and long delayed statement of Lord Clarendon on the Central Ameri-

can questions, dated on the 2d instant, a copy of which I have now the honor to transmit. Accompanying this statement, I also received a private note from his lordship, apologizing "for the further delay that has taken place, owing to the Easter holidays, and the necessity of consulting some of my [his] colleagues who were out of town."

Yours, very respectfully,

JAMES BUCHANAN.

Hon. W. L. MARCY,
Secretary of State.

Mr. Lawrence to Lord Palmerston.

UNITED STATES LEGATION,
November 8, 1849.

MY DEAR LORD: As I told you in our conversation this morning, I have been instructed by the President to inquire whether the British government intends to occupy or colonize Nicaragua, Costa Rica, the Mosquito coast, (so called,) or any part of Central America. I have also been instructed to inquire whether the British government will unite with the United States in guaranteeing the neutrality of a ship-canal, railway, or other communication, to be open to the world and common to all nations. May I beg the favor of an answer to these inquiries, and to express the wish that I may receive it before two o'clock to-morrow, so as to send it out by this week's packet?

I am aware that Nicaragua is in dispute with Costa Rica, on the one hand, about her boundary, and with the Mosquitos, on the other, about their sovereignty. I have no purpose now to enter upon those questions. I only desire to know the views of her majesty's government on the questions I have proposed. At the same time I cannot but think that Great Britain and the United States can heal these breaches by kind offices, and that the Indians can be provided for in a manner satisfactory to Nicaragua and Great Britain, and far better for them than the equivocal position they now occupy.

I need not assure your lordship that the United States have no ulterior purposes in view. They frankly disclaim all intention of obtaining territory in Central America, and I have no doubt would be willing to mutually agree with Great Britain neither to settle, annex, colonize, nor fortify that country.

I am, &c.,

ABBOTT LAWRENCE.

VISCOUNT PALMERSTON, &c.

Lord Palmerston to Mr. Lawrence.

FOREIGN OFFICE, *November 13, 1849.*

MY DEAR SIR: I have received your letter of the 8th, written in accordance with what passed in our conversation in the morning of that day, and I hasten to reply to your inquiries.

With regard to the first part of your inquiry, I beg to say that her majesty's government do not intend to occupy or colonize Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America.

With regard to Mosquito, however, a close political connexion has existed between the crown of Great Britain and the State and territory of Mosquito for a period of about two centuries, but the British government does not claim dominion in Mosquito.

With regard to the second part of your inquiry, I beg to say that her majesty's government will feel great pleasure in combining and co-operating with the government of the United States, for the purpose of assisting the operations of any company which may be formed with a view to establish a commercial communication, by canal or railway, between the Atlantic and Pacific, across the isthmus which divides the northern and southern portion of the American continent, both by obtaining local security for the works while in progress, and when completed and in use, and by placing such communication, through the means of political arrangements, beyond the reach of molestation, disturbance, or obstruction by reason of international disputes which may at any time unfortunately arise, upon the condition, moreover, that such communication should at all times be open and accessible for the commerce of all nations, upon equal terms for all. Her majesty's government would feel that the union of two great powers for the accomplishment of an object of such general utility, and tending so much to assist the diffusion of civilization and to strengthen the foundations of international peace, would be as honorable to the powers concerned in such an arrangement as the result would be advantageous to the commercial interests of the world at large.

With regard to the port of Greytown, at the mouth of the river St. John, her majesty's government would fully undertake to obtain the consent of Mosquito to such arrangements as would render that port entirely applicable, and on the principles above mentioned, to the purposes of such a sea-to-sea communication.

You advert in your letter to the differences which have arisen between the republics of Nicaragua and Costa Rica, in regard to boundaries and to some other matters, and you suggest that the joint influence of Great Britain and the United States should be employed to heal, by their good offices, the breaches which have interrupted the friendly relations of those two contiguous States. Her majesty's government would, upon every account, be glad to join with the United States in effecting such a reconciliation, and the more so because the cordial co-operation of both of those republics would be essential for the satisfactory completion of the contemplated undertaking.

I have only further to say that her majesty's government have re-

ceived with great satisfaction your assurance that the United States have no ulterior purposes in view in regard to these matters; that they frankly disclaim all intention of obtaining territory in Central America, and that you have no doubt that they would be willing to enter into a mutual agreement with Great Britain, neither to settle, annex, colonize, nor fortify that country; and I can with equal frankness assure you, that into such a mutual agreement her majesty's government would be equally ready to enter.

I am, &c., &c.

PALMERSTON.

ABBOTT LAWRENCE, Esq., &c., &c., &c.

Mr. Marcy to Mr. Buchanan.

[Extracts.]

[No. 42.]

DEPARTMENT OF STATE,

Washington, June 12, 1854.

SIR: The perusal of Lord Clarendon's reply to your statement in regard to Central American affairs does not encourage hopes of a speedy adjustment of them.

* * * * *

I still indulge the hope, that by the array of facts and arguments bearing on the questions in difference in regard to Central American affairs, the government of Great Britain will be induced to abandon the main positions assumed by Lord Clarendon in his statement of the 2d ultimo.

This government can never yield to the pretension that the treaty of the 19th of April, 1850, was only prospective in its operation, and that Great Britain retained the right to hold on to all she then had or now claims to have had in Central America. It was certainly our expectation that she came under obligations to the United States, by that instrument, to withdraw from interference in Central American affairs, and this expectation is sustained by the language of the treaty. There is room for a fair difference of opinion as to the position she should in future occupy in regard to Belize or British Honduras. It was not the object of the President, as you will perceive by your general instructions, to direct you to insist that by the Clayton and Bulwer treaty she was bound to abandon the possession of the Belize. She had a right to occupy for a specific purpose a small district of country on the shore of the Bay of Honduras, but had no sovereignty over it. The character of this right, and the extent of territory to which it applied, are both clearly defined in her treaty with Spain of 1786. If this territory could be fairly considered within the limits of Central America, then the British possession of it was affected by the treaty, and this government might consequently claim the abandonment of the British occupation and dominion over it. The assertion of the claim upon Great Britain to abandon Belize as a

territory included in the treaty is embarrassed by two considerations: first, by the notes which passed between the negotiators of the treaty at the time of exchanging ratifications; and, second, by the doubt as to its geographical position being within the limits of Central America.

Discovering on the part of the British government a disposition to escape from what are here regarded as the obvious stipulations of the treaty, the President would have you avoid embarrassing the negotiation by urging so questionable a matter as a right derived from the treaty for the surrender of Belize. He does not, therefore, instruct you to insist upon applying the stipulations of the treaty to that territory; but you will resist the British pretension to extend it to any part of Central America, or beyond the limits fixed to it in the Spanish treaty of 1786. You will also resist the British pretension to regard that territory as one of her colonies. She acquired no sovereign right in Belize under her treaties with Spain. Her treaty with Mexico, in 1826, only continued the limited right she had from Spain, and the very fact of treating with Mexico for the continuation of her usufruct of Belize was a clear acknowledgment that the sovereignty over it was in Mexico at that time.

While you will abstain from claiming the surrender of the possession of Belize under the Clayton and Bulwer treaty, you will resist the pretension of Great Britain to regard it as a colonial possession with sovereign rights, or to extend it beyond the limits designated in the original grant—the Spanish treaties of 1783 and 1786.

In a commercial point of view, the possession of Belize can now be of very little value to Great Britain; and, politically considered, it must be an incumbrance, unless she has undisclosed objects in view. Her persistence in claiming a right to it would indicate on her part a policy of retaining in her hands the means of annoying this country, and of interrupting its intercourse with its possessions on the Pacific. If it is her sincere desire to maintain peaceful relations with the United States, she would be ready for the accomplishment of such an important object to retire from so useless a possession.

An attempt on the part of Great Britain to extend Belize so as to include any part of Central America will be repudiating an express stipulation of the treaty of the 19th of April, 1850.

I cannot believe that the British government intends to hold the position that the Bay islands are an appendage to Belize. Should this be so, and she pertinaciously maintains it, there will be very little hope left for the success of your negotiation in regard to Central America. You have command of facts enough to drive her from this position, unless there is a determination to hold it against the clearest evidence and the strongest arguments.

Ruatan can only be desirable to Great Britain as a naval and military station, and for that purpose only as it would give her great facility in affecting injuriously our interests. Should she refuse to acknowledge it as a part of the State of Honduras, and retain possession of it for herself, the United States would clearly understand her object. A predetermination to interfere with our affairs thus mani-

fested will render the continuance of our amicable relations with her precarious.

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

JAMES BUCHANAN, Esq., &c., &c., &c.

Mr. Buchanan to Mr. Marcy.

[No. 39.]

LEGATION OF THE UNITED STATES,
London, July 25, 1854.

SIR: I have the honor to transmit to you a copy of my "remarks in reply to Lord Clarendon's statement of May 2, 1854," the original having been sent to his lordship on the 22d instant.

I regret their length, but I found it impossible, such were the number of topics introduced in the British statement, to render them shorter. I trust they may meet the approbation of the President and yourself.

Yours, very respectfully,

JAMES BUCHANAN.

Hon. WM. L. MARCY,
Secretary of State.

Mr. Buchanan to Mr. Marcy.

[Extract.]

[No. 61.]

LEGATION OF THE UNITED STATES,
London, February 16, 1855.

SIR: Since the ministerial crisis all public business has been suspended in this country, except such as relates to the existing war with Russia. From a conversation which I casually had with Lord Aberdeen on the day before the vote against his ministry in the House of Commons, I was confirmed in the belief that the Central American questions would have been settled had he remained in power a few weeks longer.

Yours, very respectfully,

JAMES BUCHANAN.

Hon. WM. L. MARCY,
Secretary of State.

Mr. Marcy to Mr. Buchanan.

[No. 104.]

DEPARTMENT OF STATE,
Washington, August 6, 1855.

SIR: The President is anxious to have the questions which have been raised on the treaty between the United States and Great Britain

of the 19th of April, 1850, settled, if possible, or, at least, brought to a distinct issue, before you retire from your mission. The negotiation cannot be committed to any one who so well understands the subject in all its bearings as you do, or who can so ably sustain and carry out the views of the United States.

The President has been unwilling to manifest impatience at the delay which has attended this negotiation while her Majesty's government was engrossed by the war with Russia, but he deems it to be but reasonable that it should now be urged to a conclusion. It is important that the United States should know the positions Great Britain is determined to maintain relative to the Central American questions.

I need not express to you the surprise the President felt on learning the views of her Majesty's government, as presented to you in Lord Clarendon's statement of the 2d of May, 1854, in regard to Ruatan and the other islands constituting what may now be looked upon as the British colony of the Bay islands. These views are considered by this government as not only contrary to the spirit, but directly at variance with the clear language of the convention of 1850.

After the very cogent argument contained in your able reply to that statement, the President is unwilling to believe that the positions, rather indicated than maintained, by Lord Clarendon, relative to Ruatan, will be adhered to. If a stipulation, so explicit in terms and so clearly applicable to the Bay islands, is to be nullified by interpretation, every other provision in that instrument, so far as it imposes obligations upon Great Britain, may, in the same way, and with equal plausibility, be defeated.

Should Great Britain refuse to withdraw from Ruatan and the other islands on the coast of the State of Honduras, her determination, in that respect, could not but be regarded by the President as a non-compliance with the stipulations of the treaty of 1850. The fact that these islands are a part of Central America is so unquestionable, and the stipulations of the convention are so directly applicable to them, that there seems to be no room for raising a question of interpretation.

After what was said to you by Lord Aberdeen, when at the head of the British government, it is to be hoped that the British pretension to hold Ruatan will be abandoned. If Great Britain still persists in holding these islands and in maintaining a colony there, her determination to that effect should be distinctly announced, so that this government may no longer be left in doubt as to her intentions. On this point you are instructed to ask of her Majesty's government an explicit declaration.

The main inducement which this government had, as you have well observed, for entering into this treaty, was to prevent Great Britain from acquiring or exercising dominion in Central America; but this object is entirely defeated by the interpretation which the British government proposes to give to that instrument. While the United States are excluded from occupying, colonizing, or exercising any dominion over any part of Central America, it cannot be admitted that the same restriction is not imposed on Great Britain.

You are, therefore, directed to declare explicitly to her Majesty's government, that the President, after a full consideration of what is alleged in Lord Clarendon's statement of the 2d of May, 1854, cannot entertain a doubt but that Great Britain is solemnly bound by the first article of the convention of 1850 not to occupy, or fortify, or colonize, or assume or exercise any dominion over Ruatan, or any of the islands on the coast of the State of Honduras, known or described as the Bay islands, and that he expects she will, in fulfilment of the stipulations of that treaty, abandon the possession she now holds of this part of Central America.

It would be superfluous to enlarge upon the views you have taken of the British protectorate over the Mosquito Indians. The groundlessness of the British pretensions to exercise control or dominion in Central American affairs, under the shadow of this protectorate, is so clearly demonstrated in your remarks, in reply to Lord Clarendon's statement, as to supersede further discussion on the subject. What effect these remarks have produced on the British government is not yet known. If they have received the consideration due to them, I am sure they will open the way to the peaceful adjustment of these embarrassing Central American questions.

It is not strange that Lord Clarendon should manifest some reluctance to have the foundation of the British protectorate over the Mosquitos explored; but the rights claimed under it seem necessarily to have called for the examination which you have given to the subject. The result of that examination shows that the Mosquito kingdom, as a political state, is, in any view of it, what Lord Palmerston acknowledged it to be—a mere fiction. Upon this admitted fiction, Great Britain now attempts to establish a substantial sovereign power over an extensive region in Central America, and, when required by the United States to withdraw from the exercise of this power, in compliance with the stipulations of the convention of 1850, she endeavors to escape from her obligation to do so, by designating the dominion she exercises as a protectorate.

A protectorate necessarily implies the actual existence of a sovereign authority, in the protected power; but where there is, in fact, no such authority, there can be no protectorate. The Mosquitos are a convenience to sustain British pretensions, but cannot be regarded as a sovereign state. Lord Palmerston, as was evinced by his remark to Mr. Rives, took this view of the political condition of the Mosquitos; and it is so obviously correct, that the British government should not be surprised if the United States consider the subject in the same light.

It was the confident belief of the United States that this fiction of a Mosquito kingdom had been disposed of by the convention, but very much to their surprise it is now resorted to as the basis of a British dominion over an extensive region of Central America.

Admitting that the convention did not require the absolute renunciation of the Mosquito protectorate, it imposed, as is admitted, restrictions upon it. After the conclusion of that treaty, it could not be used for the purpose of occupying, fortifying, or colonizing any part

of Central America, or for the purpose of assuming or exercising dominion over the same.

Great Britain will not, I think, contend that it has been thus practically restricted since the ratification of the convention of 1850. There is no visible power, civil or military, in the Mosquito territory, but that which is exercised by British subjects.

It is understood, and, indeed, asserted by the British government, that the protectorate is only used for the security of the rights of the Mosquito Indians, and that it is ready to abstain from further interference in that country whenever these rights can be in a proper manner guarantied to those Indians.

This is a question between the State of Nicaragua and those Indians, with which neither Great Britain nor the United States has any business to interfere, except in friendly conference with Nicaragua.

Were this the only difficulty in carrying out the convention of 1850, as it is understood by the United States, I should entertain but little doubt that a satisfactory adjustment might be made of the Central American questions. I apprehend, however, that there will be more difficulty in inducing Great Britain to comply with the stipulations of the treaty by surrendering the territory encroached on by her subjects, between the Sibun and Sarstoon rivers. Her claim to hold possession of this part of Central America is as groundless as her pretensions to the Bay islands.

It is difficult to conceive how the argument which you have submitted to her Majesty's government against this claim can be refuted. Great Britain cannot hold this territory without assuming or exercising dominion over a part of Central America; and this she has, in the most explicit manner, and in the strongest terms, covenanted not to do.

If she can succeed in her attempt to convert her license to cut logwood at the Belize, within the limits specified by her treaties with Spain of 1783 and 1786, into a sovereign right over that territory, and extend it so as to cover the region between the Sibun and Sarstoon, she will in that way entirely destroy the mutuality of the convention of 1850. It was the manifest intention of that instrument to exclude both of the contracting parties from holding, as well as from acquiring, territorial possessions in Central America. This intention was not clothed in ambiguous language, but was set forth in explicit terms. The United States have bound themselves not to acquire any such possessions, and Great Britain has stipulated not to assume or exercise any dominion over any part of Central America. This covenant is in nowise restricted by the explanatory note of the negotiators of the 4th of July, 1850.

The United States have a right to insist, and do insist, that the possession of the British government at the Belize shall be restricted to the limits and objects specified in the Spanish grant, and that all beyond those limits, falling within Central America, shall be relinquished.

You are instructed by the President to urge upon her Britannic Majesty's government this view, and to claim a compliance with it as demanded by the stipulations of the convention of 1850.'

The British government having been furnished with the views entertained by the President in regard to the obligations imposed by that convention, he expects it will be equally explicit on its part.

He does not doubt that the interest of the two countries, and the mutual desire to maintain existing amicable relations, will alike inspire each party with a conciliatory spirit, which will enable them to overcome all obstacles to a satisfactory adjustment.

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

JAMES BUCHANAN, Esq., &c., &c., &c.

Mr. Buchanan to Mr. Marcy.

[No. 89.]

LEGATION OF THE UNITED STATES,
London, September 11, 1855.

SIR: I have the honor of transmitting to you the copy of a note which I this day addressed to Lord Clarendon on the Central American questions, in obedience to your instructions of the 6th ultimo, (No. 104.) I shall, of course, be anxious to learn whether it has received the President's approbation. It has been prepared with much care, my purpose having been to employ conciliatory language, so far as this might be done consistently with the President's instructions and the attainment of the objects which he had in view.

Yours, very respectfully,

JAMES BUCHANAN.

Hon. WILLIAM L. MARCY,
Secretary of State.

Mr. Buchanan to Lord Clarendon.

LEGATION OF THE UNITED STATES,
London, September 11, 1855.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States, has been instructed by the President again to call the attention of the Earl of Clarendon, her Majesty's principal secretary of state for foreign affairs, to the Central American questions pending between the two governments, under the convention of the 19th April, 1850.

The President has directed the undersigned, before retiring from his mission, to request from the British government a statement of the positions which it has determined to maintain in regard to the Bay islands, the territory between the Sibun and the Sarstoon, as well as the Belize settlement, and to the Mosquito protectorate. The long delay in asking for this information has proceeded from the President's reluctance to manifest any impatience on this important subject whilst the attention of her Majesty's government was engrossed by the war with Russia. But as more than a year has already elapsed since the termination of the discussion on these questions, and

as the first session of a new Congress is rapidly approaching, the President does not feel that he would be justified in any longer delay.

Whilst it is far from the purpose of the undersigned to reopen the general discussion, he has been instructed to communicate to the Earl of Clarendon the conclusions at which the President has arrived upon the whole case.

After having carefully reviewed and reconsidered all the questions involved, with the light cast upon them by the Earl of Clarendon's statement of the 2d May, 1854, the President has expressed his unwillingness to believe that the positions, which he conceives to be rather indicated therein than finally adopted, will be adhered to by the British government.

It was, in his opinion, the manifest intention of the convention to exclude both the contracting parties from holding or occupying, as well as from acquiring territorial possessions in Central America; and that this intention is not clothed in ambiguous language, but is set forth in explicit terms. The United States have bound themselves not to acquire any such possessions, and Great Britain has stipulated not to "assume or exercise any dominion over any part of Central America." Indeed, without such a reciprocal engagement, no mutuality whatever would have existed between the covenants of the contracting parties. Whilst the United States are excluded from occupying, colonizing, or exercising dominion over any part of Central America, it cannot be admitted that the same restriction, imposed in the very same language, is not equally applicable to Great Britain.

The President, therefore, confidently believes that Great Britain is bound by the first article of the convention of 1850 to withdraw from the possession she now holds of Ruatan and the other Central American islands on the coast of the State of Honduras, as well as from the territory in Central America between the Sibun and the Sarstoon, which has been encroached upon by her Majesty's subjects. He is also of opinion that the possession of the British government at the Belize should be restricted to the limits and objects specified in the treaties between Great Britain and Spain of 1783 and 1786.

In regard to the alleged protectorate over the so-called Mosquito kingdom, the President has instructed the undersigned to say it was his confident belief that this protectorate had been finally disposed of by the convention. It is therefore much to his regret that he finds it is still continued as the basis of British dominion over an extensive region in Central America.

Even although Great Britain admits that the convention has imposed restrictions on the protectorate claimed, yet she still continues to exercise the same dominion over the Mosquito coast which she had done before its date. Indeed, at the present moment, no visible power, civil or military, exists in the Mosquito territory, except that which is exercised by British subjects, notwithstanding the convention expressly prohibits both parties from using any protection which either may afford to any state or people, for the purpose of occupying, fortifying, or colonizing, the Mosquito coast, or any part of Central America, or for the purpose of assuming or exercising dominion over the same.

The declaration of the British government, that this protectorate is only employed for the security of the rights of the Mosquito Indians, and that it is ready to abstain from further interference in that country whenever these rights can, in a proper manner, be guaranteed to them, cannot be recognised by the United States as having any foundation in the convention. The President considers this to be a question between Nicaragua and the Indians within its territory; with which neither Great Britain nor the United States has any right to interfere, except in friendly conference with the authorities of that State.

Having thus distinctly presented to the British government the views of the government of the United States in regard to the obligations imposed by the convention of 1850, the President feels assured that the Earl of Clarendon will, with characteristic frankness, be equally explicit in presenting the views of the British government in regard to these obligations.

In conclusion, the undersigned is instructed to state that the President does not doubt that the interest of the two countries, and their mutual desire to maintain existing friendly relations, will alike inspire each party with a conciliatory spirit, and enable them to overcome all obstacles to a satisfactory adjustment of the Central American questions.

The undersigned has the honor to renew to the Earl of Clarendon the assurance of his distinguished consideration.

JAMES BUCHANAN.

Right Hon. the EARL OF CLARENDON, &c., &c., &c.

Mr. Buchanan to Mr. Marcy.

[Extract.]

[No. 95.]

LEGATION OF THE UNITED STATES,
London, October 4, 1855.

SIR: I have now the honor of transmitting to you a copy of the note of Lord Clarendon of the 28th, received by me on the 29th ultimo, in answer to my note of the 11th ultimo, on the Central American questions, as well as a copy of my reply dated on the 4th instant. Lord Clarendon's note is of such a character as might have been anticipated after the conversation between his lordship and myself on the 5th April last, reported in my despatch (No. 66) of the 7th of that month. This note has been received so much sooner than I had anticipated, that if I were now in possession of my letter of recall, I might return home on the 6th of October, as I had originally determined. It is impossible, however, that I should leave before this letter shall arrive, and it is certainly proper, under all the circumstances, that I should remain here no longer than may be necessary. If, therefore, it shall not have been

forwarded before the arrival of this despatch, I trust it may be sent by the next succeeding steamer.

* * * * *

Yours, very respectfully,

JAMES BUCHANAN.

Hon. WILLIAM L. MARCY,
Secretary of State.

FOREIGN OFFICE, *September 28, 1855.*

The undersigned, her Majesty's principal secretary of state for foreign affairs, has the honor to acknowledge the receipt of the note which Mr. Buchanan, envoy extraordinary and minister plenipotentiary of the United States, addressed to him on the 11th instant, stating that he had been directed by the President, before retiring from his mission, to request from the British government a statement of the positions which it has determined to maintain, in regard to the Bay islands, to the territory between the Sibun and the Sarstoon, as well as the Belize settlement, and to the Mosquito protectorate, and setting forth the conclusions at which the President has arrived upon the whole case—namely, that it was the intention of the convention of the 19th of April, 1850, to exclude both the contracting parties from holding or occupying, as well as from acquiring, territorial possessions in Central America; and that, consequently, Great Britain is bound to withdraw from the possession she now holds of Ruatan and other Central American islands on the coast of the State of Honduras, as well as from the territory in Central America between the Sibun and the Sarstoon; that the possession of the British government at Belize should be restricted to the limits and objects specified in the treaties between Great Britain and Spain of 1783 and 1786; and that the protectorate of the so-called Mosquito kingdom was finally disposed of by the convention.

The undersigned observes with satisfaction that, while thus expressing the opinion of the President of the United States on the several points thus enumerated, Mr. Buchanan announces that it is far from his purpose to re-open the general discussion upon them. Her Majesty's government had, indeed, refrained from pursuing that discussion by replying to Mr. Buchanan's note of the 22d of July, 1854, because it appeared to them that the continuation of the correspondence was not likely to lead to any satisfactory conclusion; and, as her Majesty's government are still of that opinion, the undersigned will confine his answer to Mr. Buchanan's present note within the same limits as those which Mr. Buchanan has prescribed to himself.

In answer, therefore, to the questions put by Mr. Buchanan, the undersigned has the honor to state to him, that her Majesty's government adhere to the opinion which they have uniformly held, that the convention of April 19, 1850, was merely prospective in its operation, and did not in any way interfere with the state of things existing at the time of its conclusion. If it had been intended to do so, there

can be no question but that, in conformity with what the undersigned believes to be the universal rule in regard to instruments of this nature, it would have contained, in specific terms, a renunciation, on the part of Great Britain, of the possessions and rights which, up to the conclusion of the convention, she had claimed to maintain, and such renunciation would not have been left as a mere matter of inference.

Neither can her Majesty's government subscribe to the position that, if the convention did not bear the meaning attached to it by the United States, it would have imposed upon the government of the United States a self-denying obligation which was not equally contracted by Great Britain, and that such a state of things could not have been in the intention of the contracting parties; because, if the convention did bear the meaning attached to it by the United States, it would then have imposed upon Great Britain the obligation to renounce possessions and rights without any equivalent renunciation on the part of the United States. If the government of the United States can complain, in the one case, of the convention as presenting a unilateral character unfavorable to the United States, with much greater reason might the government of Great Britain, in the other case, if the assumption of the United States were to be acted upon in the construction of the convention, complain of it as prejudicial to England.

But looking to the object which the contracting parties had in view at the conclusion of the convention—namely, the security of the proposed ship-canal—the British government consider that the design of the contracting parties was not to disturb any state of things then existing, but to guard against the future creation of a state of things which might by possibility interfere with the security of the proposed canal. That such was the true design of the convention, is obvious from the provision in the sixth article, by which the contracting parties engaged to invite every State to enter into stipulations with them similar to those contained in the convention. But if the position of the United States government were sound, and the convention was intended to interfere with the state of things existing at the time of its conclusion, and to impose upon Great Britain to withdraw from portions of territory occupied by it, a similar obligation would be contracted by other states acceding to the convention, and the governments of the Central American States would, by the mere act of accession, sign away their rights to the territories in which they are situated.

The British government share the conviction of the President of the United States, that the interest of the two countries, and their mutual desire to maintain existing friendly relations, will alike inspire each party with a conciliatory spirit, and enable them to overcome all obstacles to a satisfactory adjustment of Central American questions. The British government see no reason why it should be otherwise. The British government neither have the wish to extend the limits of their possessions or the sphere of their influence in that quarter, nor would any British interest be promoted by doing so; but the British government are not prepared to contract either the one or the other,

in pursuance of the interpretation of a convention, to which interpretation they cannot subscribe.

The undersigned requests Mr. Buchanan to accept the assurance of his highest consideration.

CLARENDON.

Hon. JAMES BUCHANAN, &c., &c., &c.

LEGATION OF THE UNITED STATES,
October 4, 1855.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States, has the honor to acknowledge the receipt of the note of the Earl of Clarendon, her Majesty's principal secretary of state for foreign affairs, dated on the 28th ultimo, in reply to the note of the undersigned of the 11th ultimo, in reference to the Central American questions between the two governments; and he will not fail to transmit a copy of the same, by the next steamer, to the Secretary of State at Washington.

Whilst far from intending to renew the general discussion of these questions, which has already been exhausted, the undersigned, in passing, would make a single observation in regard to the Earl of Clarendon's remark, that if the convention of the 19th April, 1850, had intended that Great Britain should withdraw from her possessions in Central America, "it would have contained, in specific terms, a renunciation" to that effect; "and such renunciation would not have been left as a mere matter of inference."

Now, it appears to the undersigned that an engagement by a party not "to occupy," "or exercise any dominion" over territory of which that party is in actual possession at the date of the engagement, is equivalent in all respects to an agreement to withdraw from such territory. Under these circumstances, this is not "a mere matter of inference;" because the one proposition is necessarily and inseparably involved in the other, and they are merely alternative modes of expressing the same idea. In such a case, to withdraw is not to occupy; and not to occupy is necessarily to withdraw.

The undersigned needs no apology for briefly advertng to another argument of the Earl of Clarendon, because it has now for the first time been advanced. He states, that "if the position of the United States government were sound, and the convention was intended to interfere with the state of things existing at the time of its conclusion, and to impose upon Great Britain to withdraw from portions of territory occupied by it, a similar obligation would be contracted by other states acceding to the convention, [under the 6th article,] and the governments of the Central American States would, by the mere act of accession, sign away their rights to the territories in which they are situated."

Confining himself strictly to this single view of the subject, the undersigned would observe, that notwithstanding the general terms employed by the convention, an examination of its provisions, and especially of the sixth article itself, will prove it never intended that

the Central American States should become joint parties to this treaty with the United States, Great Britain, and other governments, exterior to Central America. These States are the subjects on which the guarantees of the convention were to act, and the exclusion of all other powers from the occupancy of Central America, with a view to the security not only of this canal, but all other canals or railroads across the isthmus, was one of the main objects to be accomplished by the treaty.

The Earl of Clarendon has himself indicated how absurd it would be for the Central American governments to become joint parties to this convention, according to the American construction. It would, however, be none the less absurd according to the British construction; because, then, no Central American State could accede to the treaty without confining itself forever within its existing boundaries, and agreeing not to add to its territory and extend its occupation under any possible circumstances which might arise in the future.

Besides, were it possible for Nicaragua, for example, to become a party to this joint convention, she would then take upon herself the extraordinary obligation to use her own influence with herself, under the 4th article, to induce herself to facilitate the construction of the canal, and to use her good offices to procure from herself "the establishment of two free ports, one at each end of the canal," both these ports being within her own limits. Consequences almost equally extraordinary would result from other portions of the convention.

But although the contracting parties could not have intended that the Central American States should become joint parties to the convention, yet they foresaw that it would be necessary to obtain stipulations from one or more of them, individually, providing for the security of the proposed canal, adapted to their anomalous condition, and without interfering in any manner with their territorial possessions. Accordingly, in the sixth article, and in the clause next following that commented upon by the Earl of Clarendon, the convention provides as follows: "And the contracting parties likewise agree that each shall enter into treaty stipulations with such of the Central American States as they may deem advisable, for the purpose of more effectually carrying out the great design of this convention, namely, that of constructing and maintaining the said canal as a ship communication between the two oceans, for the benefit of mankind, on equal terms to all, and of protecting the same," &c., &c.

In order to arrive at the conclusion that the Central American States are embraced in the general language of the first clause of the sixth article, it would be necessary to overlook this second clause entirely, or at least to regard it as unnecessary and without meaning.

The undersigned has the honor to renew to the Earl of Clarendon the assurance of his distinguished consideration.

JAMES BUCHANAN.

Right Hon. the EARL OF CLARENDON, &c., &c., &c.

Statement for Mr. Buchanan.

FOREIGN OFFICE, May 2, 1854.

The substance of the case submitted to her Majesty's government by Mr. Buchanan may be briefly stated as follows:

1. That Great Britain, prior to April, 1850, was "in possession of the whole coast of Central America, from the Rio Hondo to the port and harbor of San Juan de Nicaragua, except that portion of it between the Sarstoon and Cape Honduras, together with the adjacent Honduras island of Ruatan."

2. That the government of the United States does not understand under what title Great Britain, having abandoned the greater part of these possessions in 1786, resumed them subsequently; nor does it know precisely at what period the protectorate of Great Britain over Mosquito was re-established, the first intimation which the United States government had received on the subject being from an American agent in 1842; and that, moreover, Captain Bonnycastle and other authorities had never represented the Mosquito shore as extending as far as the river and town of San Juan de Nicaragua, which latter the Spaniards had considered a place of much importance and the key to the Americas.

3. That it appears to the United States government that Spain, in virtue of the treaty of 1786, had a right to object to Great Britain establishing herself on the Mosquito coast, or assuming the protectorate of Mosquito; and that Great Britain had, by her treaty with Mexico, recognised that the former colonies of Spain stood in the same position with respect to other states as old Spain herself, and inherited the advantages of the ancient treaties of the mother country; that the United States government had always contested the claim of Great Britain to all the possessions held by her in Central America, with the exception of that portion of the settlement of Belize which is situated between the Rio Hondo and the Sibun; that it had always resisted the right of Great Britain to establish a protectorate over the Mosquitos, and that it had learned with great surprise and regret that the British forces had, in 1848, expelled the Nicaraguan authorities, which held the port and town of San Juan de Nicaragua, in virtue of the old Spanish rights, and had then hoisted thereupon the flag of the Mosquitos.

4. That Mr. Monroe, when President of the United States, had, in 1823, announced in a public message to Congress that the American continents were not, henceforth, to be considered subject to colonization by European powers.

5. That no claim on the part of Great Britain to act in the name or under the authority of the Mosquito Indians could be well founded, inasmuch as that race, even if never conquered by Spain, were savages, who, according to the practice and principles of all European nations which had ever acquired territory on the continent of America, had no title to rank as independent states in the territory they occupied, but had a claim to mere occupancy thereon, such territory being the dominion of the discoverer of it, or even of the discoverer of territory on the same continent, though far distant from it, by whom, alone,

this claim to mere occupancy on the part of the Indians was to be extinguished by purchase, as the advances of the white settlements rendered it necessary.

And, finally, that Great Britain, having declared by treaty, in 1850, that she would neither colonize, fortify, occupy, nor assume dominion over Mosquito or Central America, was thereby, at all events, bound to withdraw her protection from the people and territory of the Mosquitos, and moreover to deliver up Ruatan, which was an island belonging to Honduras, a Central American State, but which, nevertheless, had recently been colonized and occupied by Great Britain.

Such are the main points brought forward by Mr. Buchanan in the statement which he has delivered to her Majesty's government.

If, in speaking of the possessions held by Great Britain previous to 1850 on the coast of Central America, (the settlement of Belize excepted,) Mr. Buchanan means that his expressions should apply to that district which is called the Mosquito country, it is proper that her Majesty's government should at once state that her Majesty has never held any *possessions* whatsoever in the Mosquito country. But although Great Britain held no *possessions* in the Mosquito country, she undoubtedly exercised a great and extensive influence over it, as the protecting ally of the Mosquito king; that king or chief having occasionally been even crowned at Jamaica, under the auspices of the British authorities.

The United States government will, it is apprehended, scarcely expect that Great Britain should enter into any explanations or defence of her conduct with respect to acts committed by her nearly forty years ago, in a matter in which no right or possession of the United States was involved.

The government of the United States would, it is conceived, be much and justly surprised if the government of Great Britain were now to question the propriety of any of its own long past acts by which no territorial right of Great Britain had been affected, nor would the American people consider any justification or explanation of such acts to foreign states consistent with the dignity and independent position of the United States. The government of the United States, therefore, will not be surprised if the government of Great Britain abstains, on this occasion, from entering into anything which might appear an explanation or defence of its conduct with regard to its long established protectorate of the Mosquitos.

With respect to any right or any interference of the government of old Spain, on the subject of the Mosquito protectorate, it must be observed, that since the peace of 1815, that government has never raised any question with respect to this protectorate; and as for Great Britain having by her treaty with Mexico recognised, as a principle, that the engagements between herself and Spain were necessarily transferred to every fraction of the Spanish monarchy which now exists, or may exist, on a distinct and independent basis, her Majesty's government must entirely deny this assumption. Great Britain, in her treaty with Mexico, simply stipulated that British subjects should not be worse off under Mexico independent, than under Mexico when a Spanish province. It was natural, in recognising the independence of Mexico,

that Great Britain should make such a stipulation; but the fact of her doing so rather proves that she thought a special stipulation necessary, and that she did not conceive that she would have enjoyed, under any general principle, the privilege she bargained for; and this stipulation, as indeed the treaty itself, is a proof that Mexico was not considered as inheriting the obligations or rights of Spain.

But admitting that it may, in some cases, be expedient, although not obligatory, to recognise the rights and obligations of old Spain as vested in the new Spanish American States; and allowing that, in conformity with that policy, Great Britain might have thought proper to receive, concerning Mosquito, the remonstrances of those neighboring republics which have successively risen in America on the ruins of the Spanish empire; even then, it may be observed, that no remonstrance was made by any of such republics for many years after the protectorate of Great Britain over Mosquito had been a fact well known to them; and moreover, that when such remonstrances were made, they were made with similar pretensions, not by one only, but by several of those governments, insomuch that if the Mosquito Indians were at this moment withdrawn altogether from the portion of America which they now inhabit, and if it were permitted to the States of Spanish origin to inherit each respectively the claims of their parent State, it would still be a question on which of the claimants the territory thus left unoccupied would of right devolve; whilst it is certain that such withdrawal, without previous arrangements, would lead to contests alike disadvantageous to the real interests of the several States, and to the general prosperity of Central America herself.

Thus much with reference to the conduct and position of Spain and the Central American States with regard to the British protectorate in Mosquito; but with respect to the conduct and position of the United States relative thereto, Mr. Buchanan is mistaken in thinking that the United States government has always contested and resisted the position assumed by Great Britain on the Mosquito coast.

It may be true that the United States were not informed of the position of Great Britain in respect to Mosquito until 1842, but they were *then* informed of it; and yet there is no trace of their having alluded to this question in their communications with her Majesty's government up to the end of 1849. Nay, in 1850, when the President of the United States presented to Congress various papers relative to the affairs of Central America, it will be seen that, on introducing these affairs to the attention of Congress, the President's Secretary of State for foreign affairs expressly says that the government of Nicaragua, in November, 1847, solicited the aid of the United States government to prevent an anticipated attack on San Juan, by the British forces acting on behalf of the Mosquito king, but received no answer; that the president of Nicaragua addressed the President of the United States at the same time, and received no answer; that in April, 1848, the United States consul at Nicaragua, at the request of the minister of foreign affairs of that republic, stated the occupation of San Juan by a British force, but was not answered; that on the 5th November, 1848, M. Castillon, proceeding to London from Nicaragua, and then to Washington, addressed a letter to the United

States Secretary of State, soliciting his intervention with regard to the claims of Great Britain in right of the Mosquito king, and received no answer; that on the 12th of January, 1849, Mr. Bancroft, then representative of the United States to the court of St. James, referring to Mr. Castillon's arrival in London, and the subject of his mission to settle the affairs of San Juan de Nicaragua with the British government, said, "I think it proper to state to you my opinion, that Lord Palmerston will not recede. I have, of course, taken no part;" and that again, in March, Mr. Bancroft wrote that Mr. Castillon would be anxious to seek advice from the United States, but that he had always made answer to him "that he was not authorized to offer advice."

It would thus seem, on the authority of the United States government itself, that up to the end of 1849 the United States government had made no remark or remonstrance to Great Britain on the subject of her protectorate of Mosquito; and that even with respect to the capture of San Juan de Nicaragua (now called Greytown) the United States minister in London was not authorized to take any steps concerning it, nor even to afford to the commissioner from Nicaragua the benefit of his counsels and good offices thereupon; and it is but right to observe that the United States government pursued by this course towards her Majesty's government that friendly and considerate policy which her Majesty's government always wishes to pursue and has pursued towards the United States government when that government has had differences with other powers. With regard to the grounds on which her Majesty's government made the capture of San Juan de Nicaragua in 1848, the desire of her Majesty's government to avoid all subjects of controversy, in which it is not absolutely necessary to enter, restrains it from here adverting to the documents which stated the reasons on which her Majesty's government came to the resolution it at that time adopted; and, indeed, as those documents were laid before parliament and communicated officially to the United States government, it would be superfluous now to recapitulate their contents.

With regard to the doctrine laid down by Mr. President Monroe, in 1823, concerning the future colonization of the American continent by European states, as an international axiom which ought to regulate the conduct of European states, it can only be viewed as the dictum of the distinguished personage who delivered it; but her Majesty's government cannot admit that doctrine as an international axiom which ought to regulate the conduct of European states. The doctrine with regard to the incapacity of the Indians to exercise the rights of sovereign powers must also remain a doctrine on which each State which has to deal with such Indians must be free to exercise its own policy and to follow the dictates of its own conscience. It is certainly true that Great Britain, Spain, and the United States were all at one time in the habit of treating the Indian races in the manner which Mr. Buchanan describes; but this past practice, though general, cannot be taken as an invariable guide for any future policy. The period has not yet passed beyond the memory of man at which Great Britain and the United States, now so nobly distinguished in sup-

pressing the slave-trade, practised and encouraged that trade and deemed it legitimate.

The project of a free republic, composed chiefly of negroes from the United States, and originally established under the enlightened and humane patronage of the United States, would have been deemed fifty years ago an absurd and impossible chimera ; yet Liberia exists, and now flourishes as an independent state.

Already Great Britain, in her own dealings with Indians, has recognised their rulers as independent chiefs ; whilst in her treaties with foreign powers she has spoken of their tribes as nations, and stipulated for the restoration of their possessions. Thus, on all the above-mentioned topics her Majesty's government, without seeking to impose any opinions on the United States government, claims a right to hold its own opinions ; nor indeed does it appear necessary, although, doubtless, it would be desirable, that her Majesty's government and the United States government should be perfectly agreed with respect to them. The one remaining subject to be discussed is, however, of a very different character. It relates to a question in which Great Britain and the United States are both directly concerned, and in regard to which it is a matter both of honor and interest that they should avoid all misunderstanding or disagreement. This subject is the rightful interpretation of a treaty engagement to which Great Britain and the United States are parties.

Mr. Buchanan lays it down as a fact, that Great Britain held the sovereignty of the Mosquito coast prior to 1850 ; and he then states that Great Britain still continues to hold this sovereignty, although the treaty of 1850 prohibits her from so doing. But Mr. Buchanan confounds the two conditions of a sovereignty and of a protectorate, and under this error treats the agreement "not to colonize, nor occupy, nor fortify, nor assume nor exercise dominion over," as including an agreement not to protect.

With respect to sovereignty, Great Britain never claimed, and does not now claim, or hold any sovereignty in or over Mosquito ; but with respect to the protectorate which Great Britain has long exercised over Mosquito, her Majesty's government asserts that the treaty of 1850 did not, and was not meant to, annihilate such protectorate, but simply to confine its powers and limit its influence.

Now the spirit of a treaty must always be inferred from the circumstances under which it takes place, and the true construction of a treaty must be deduced from the literal meaning of the words employed in its framing. The circumstances under which the treaty of 1850 took place were the following :

Up to March, 1849, *i. e.* one whole year after the capture of San Juan de Nicaragua by the British forces, the United States government made no observation, as has already been stated, to the British government, having any allusion to this act. But in November, 1849, Mr. Lawrence, then just arrived in England as the representative of the United States government, addressed a note to Lord Palmerston, not asking any question as to the British protectorate of Mosquito, but requesting to know whether her Majesty's government would join with the United States in guarantying the neutrality of a ship-canal,

railway, or other communication between the two oceans, to be open to the world, and common to all nations ; and whether the British government intended to occupy or colonize Nicaragua, Costa Rica, the Mosquito coast, (so called,) or any part of Central America. To this note Lord Palmerston replied by stating that her Majesty's government had no intention to occupy or colonize Nicaragua or Costa Rica, the Mosquito coast, nor any part of Central America ; and that her Majesty's government would feel great pleasure in combining and co-operating with the government of the United States for the purpose of assisting the operations of a company which might be formed with a view to establish a general communication, by canal or railroad, across the isthmus separating the northern and southern portions of the American continent, both by offering security for the works while in progress and when completed and in use, and by placing such communication, through the means of political arrangements, beyond the reach of molestation, disturbance, or obstacle, by reason of international disputes which may at any time unfortunately arise, upon the conditions, moreover, that such communications should at all times be open and accessible for the commerce of all nations, and on equal terms for all. These notes, copies of which are hereunto annexed, are of great importance, inasmuch as they laid the foundation for the subsequent convention of Washington, whilst they explain the nature of the feelings entertained at that time by the United States government and by the government of her Majesty. It was clear that the United States government, which had regarded the affairs of Central America not long before with comparative indifference, had had its attention lately called to this part of the world by its acquisition of California, and the discovery of the ore which that region was found to contain—circumstances which rendered of vast importance some safe and rapid means of communication between the possessions of the United States on the Pacific and the possessions of the United States on the Atlantic. A project of a canal communication, moreover, through the State and Lake of Nicaragua and the river San Juan was then in contemplation, and Nicaragua had granted to a company of Americans whatever rights it possessed over the proposed line of traffic.

Great Britain, however, by having placed a people under her protection in possession of the port and town of San Juan de Nicaragua, might exert her influence either to prevent this canal being formed, or, if she allowed it to be formed, might aim, through her protectorate, at acquiring over such canal peculiar rights or absolute control.

The government of the United States was, therefore, justly anxious to know whether the British government would favor or impede the construction of a canal by the river San Juan, and whether it would attempt to establish a predominant and permanent power over this canal, by colonizing, fortifying, occupying, or taking absolute possession of the country through which it passed.

The mere protectorate of Great Britain, stripped of those attributes which affected the construction and the freedom of the proposed canal, was of small consequence to the United States, but, connected with those attributes, it was a matter of great importance.

On the other hand, her Majesty's government, which had just expelled the Nicaraguans from Greytown (or San Juan de Nicaragua) and the country adjacent, and had formally discussed and finally rejected the claims of the Nicaraguan government to these contested possessions, could not with honor or credit retire, at the mere interposition of the United States, from the position it had assumed, or abandon the long-established British protectorate over the Mosquitos, and allow the authorities of Nicaragua to re-occupy the ground from which they had so recently been driven. But Great Britain could clearly engage herself to the United States to do all that was required respecting the construction and protection of any canal communication, to be enjoyed on equal terms by all nations; and she could also limit the powers of her protectorate over Mosquito, so as to remove all suspicion or possibility of her using it in any manner that would place such canal communication under her exclusive authority and dominion.

Thus, when the drawing up of a treaty afterwards took place, the object of the British negotiator, and, it must be presumed, that of both negotiators, necessarily was to draw up such a convention as, without conceding any specific point on which one party could not in honor yield, would make such concessions on all other points as the other party desired; and if the convention in question be referred to, it will be seen that it is drawn up carefully, in such a manner as to make it a matter of indifference, so far as the canal is concerned, as to whether the port and town of San Juan are under the modified protectorate of Great Britain or under the government of Nicaragua. Moreover, in drawing up this treaty, both Mr. Clayton and Sir H. L. Bulwer, referred to the notes which had passed between Lord Palmerston and Mr. Lawrence, and even made use of the precise terms which had been then employed; from which it must of necessity be inferred that they meant to transfer to their convention, with the words which they borrowed, the meaning which had previously been attached to those words in the documents from which they extracted them; and a reference to such documents will at once show that Mr. Lawrence, while he asked her Majesty's government whether it meant to occupy, fortify, colonize, or assume or exercise dominion over Mosquito, did not allude to the protectorate of Great Britain over that country, and that Lord Palmerston, in declaring that her Majesty's government did not intend to do any of these things, expressly left the question concerning the political relations between Great Britain and the Mosquitos untouched. So much for the spirit which presided over the convention of 1850.

With regard to the literal meaning, this treaty declares in words that the two parties "will not occupy nor fortify, nor colonize, nor assume nor exercise any dominion over Nicaragua, Costa Rica, the Mosquito coast, nor any part of Central America;" and that neither party will "make use of any protection which either affords or may afford, or any alliance which either has or may have" with any state or people, for the purpose of occupying, fortifying, or colonizing Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America, or of assuming or exercising dominion over the same.

Mr. Buchanan says, with regard to that portion of the foregoing sentence which restricts the use which Great Britain or the United States might make of any protection which either might afford to any state or people, it has been said that this article of the convention acknowledges by implication the protectorate of Great Britain over Mosquito. Now her Majesty's government does not pretend that in this article the United States acknowledges the aforesaid protectorate of Great Britain in Mosquito; it was never the intention of her Majesty's government, or that of the British negotiator, to obtain indirectly that which was not asked for openly; but it is evident that this article clearly acknowledges the possibility of Great Britain or the United States affording protection to Mosquito, or any Central American State, and that the intention of the parties was not to prohibit or abolish, but to limit and restrict such protectorate. But supposing all mention of protection in the treaty had been omitted, and that the question at issue merely rested on the words "colonize, fortify, occupy, and assume or exercise dominion over," is there any one of these terms which excludes the right of protection, although each of them limits its capability? Defending or protecting is a temporary act of friendship; occupying, colonizing, fortifying, or acquiring sovereignty, are acts which have a permanent result.

It has never been held that neutral territories or kingdoms, over which other kingdoms are prohibited by treaty from acquiring dominion—which other kingdoms cannot colonize, occupy, nor fortify—may not be defended by such kingdoms at the desire and request of the neutral states, although it would doubtless be necessary for any nation undertaking such defence to declare formally and promise clearly that it would not turn this transitory and allowable act into one of a continuous nature, which engagements had prohibited.

No one will maintain that the bar to colonization or fortifying is a bar to all protection; no one will assert that to afford protection to a state, and establish dominion over it are necessarily the same thing; no one will contend that to send a naval or military force for the purpose of expelling an enemy from the territory of an ally, or of punishing his antagonist, is to hold or occupy the territory of that ally or of his enemy.

Were this the sense of the word, as inserted in the treaty of 1850, as that word is equally applied to all Central America as well as to Mosquito, it would have a far wider signification than her Majesty's government contemplated, or than the United States government would in all probability admit; for in such a case neither Great Britain nor the United States could, in any circumstance, employ force, naval or military, against any Central American State, however great or just the provocation they might receive.

The citizens of the United States, for instance, might, on their way from California to Washington, be arrested and confined, on any suspicion or pretext, and the demands of the United States for their release refused. But is it to be argued that, under such circumstances, the United States could not send an armed force into Nicaragua to compel the release of the citizens from California, and chastise those who had unjustly incarcerated them? The United States government, however,

would be bound to state the object it had in view in sending a force into Nicaragua ; it would be bound to declare that it did not mean to colonize, fortify, occupy, or establish its sovereignty over Nicaragua; and by adhering to this pledge its treaty obligations would be fulfilled. But surely this dispute, as to the nature and meaning of protection, is one that should not have arisen with respect to the treaty of 1850. The very object and nature of that treaty ought to manifest that protection is not equivalent to occupation or sovereignty, and that it does not of necessity imply the acquisition of any exclusive advantages to the parties protecting, or give those parties exclusive control over that which is protected.

Great Britain and the United States, by the said treaty, bind themselves to protect certain canals or railways, which may be formed through various independent States. Great Britain and the United States do not, by this protection, acquire any right of sovereignty or occupation over such canals or railways, whilst they carefully exclude themselves from having any exclusive control over them, and from deriving from them any exclusive privileges.

It is surely unnecessary further to discuss the construction of the treaty with reference to the protection of Mosquito. That her Majesty's government merely expresses now that view of the treaty which it entertained, and which it had understood that the government of the United States entertained, when the treaty was concluded, is evident from the fact that, within little more than a month after the treaty of 1850 had been ratified, her Majesty's minister at Washington entered into further negotiations with the government of the United States relative to the position of Mosquito, interpreting the treaty as her Majesty's government now interprets it. That there was nothing extraordinary, unnatural, or unfair, in the interpretation thus given to the treaty by her Majesty's government, is equally evident from the fact that such interpretation was at once accepted by the Secretary of State, (Mr. Webster,) than whom no statesman at that time living, whether in Europe or America, was more fitted to comprehend the spirit or analyse the wording of any international obligation ; and that her Majesty's government was not at that time, and is not now, animated by any such object as that of obtaining any peculiar influence or control over the river San Juan, or the canal that may be formed from its waters, is likewise demonstrated by the circumstance, worth noting, that the object which Great Britain had in view in pursuing these further negotiations with the United States, was that of withdrawing her protection from the very town called Greytown, or San Juan de Nicaragua, and the adjoining territory, and of placing the same in the hands of some Central American State, on conditions in nowise beneficial to herself, or only beneficial in so far as such conditions tended to maintain a state of peace and tranquillity in that part of the world to which they related, and to preserve the Mosquitos in a territory bordering that which was to be ceded in an inoffensive state of neutrality and security.

Indeed, when her Majesty's minister, in a conversation which took place about the end of July, 1851, on this subject, agreed, on the part of the British government, to assign Greytown to Nicaragua,

upon her coming to a fair settlement with Costa Rica as to some of the points of contention between them, and upon her agreeing to leave the Mosquito people unmolested within certain portions of the territory which they now occupy, and over which the Spanish dominion never, otherwise than nominally, extended, Mr. Webster, whilst observing that the United States had no direct interest in any question concerning Nicaragua and Mosquito, except as respected the construction of a canal and its free navigation, and that, consequently, he did not wish to take an active part in any negotiations extending beyond these limits, added, addressing himself to the Nicaraguan minister, who was present, that he considered the offer made by the British minister was one which the Nicaraguan government might consider as a fair basis for an arrangement; and her Majesty's government then entertained the hope and belief that by the friendly understanding subsisting between Great Britain and the United States, and the joint efforts of both, such a settlement would be speedily concluded between all the parties interested as would enable her Majesty's government to release itself from the duty of protecting or defending Greytown, in which, for the time being, a self-elected body, in a great measure composed of United States citizens, was carrying on the government in the name of the king of Mosquito.

The preceding observations comprise all that her Majesty's government has now to say with regard to that portion of Mr. Buchanan's statement, to which they have been intended to reply.

But although the connexion of Great Britain with Mosquito formed one of the subjects of Mr. Buchanan's communication, another subject, not less important, is the actual condition of British Honduras, Ruatan, and the Bay islands.

It was never in the contemplation of her Majesty's government, nor in that of the government of the United States, that the treaty of 1850 should interfere in any way with her Majesty's settlement at Belize or its dependencies.

It was not necessary that this should have been particularly stated, inasmuch as it is generally considered that the term "Central America," a term of modern invention, could only appropriately apply to those states at one time united under the name of the "Central American republic," and now existing as five separate republics; but in order that there should be no possible misconception at any future period relative to this point, the two negotiators, at the time of ratifying the treaty, exchanged declarations to the effect that neither of the governments they represented had meant in such treaty to comprehend the settlement and dependencies in question.

Mr. Clayton's declaration to her Majesty's government on this subject was ample and satisfactory, as the following extract from his note of July 4, 1850, will show:

"The language of the first article of the convention concluded on the 19th day of April last, between the United States and Great Britain, describing the country not to be occupied, &c., by either of the parties, was, as you know, twice approved by the government, and it was neither understood by them, nor by either of us, (the negotiators,) to include the British settlement in Honduras, (commonly called

British Honduras,) as distinct from the State of Honduras, nor the small islands in the neighborhood of that settlement, which may be known as its dependencies.

“To this settlement and to these islands the treaty we negotiated was not intended by either of us to apply. The title to them, it is now and has been my intention, throughout the whole negotiation, to leave as the treaty leaves it, without denying or affirming, or in any way meddling with the same, just as it stood previously.

“The chairman of the Committee on Foreign Relations of the Senate, the Hon. W. R. King, informs me that the Senate perfectly understood that the treaty did not include British Honduras.” Such having been the mutual understanding as to the exception of the settlement of Belize and its dependencies from the operation of the treaty, the only question relative to this settlement and its dependencies, in reference to the treaty, that can now arise, is, as to what is the settlement of Belize and its dependencies? or, in other words, as to what is British Honduras and its dependencies? Her Majesty’s government certainly understood that the settlement of Belize, as here alluded to, is the settlement of Belize as established in 1850; and it is the more warranted in this conclusion from the fact that the United States had, in 1847, sent a consul to this settlement, which consul had received his exequatur from the British government—a circumstance which constitutes a recognition by the United States government of the settlement of British Honduras under her Majesty as it then existed.

Her Majesty’s government at once states this, because it perceives that Mr. Buchanan restricts the said settlement within the boundaries to which it was confined by the treaty of 1786; whilst her Majesty’s government not only has to repeat that the treaties with old Spain cannot be held, as a matter of course, to be binding with respect to all the various detached portions of the old Spanish American monarchy, but it has also to observe that the treaty of 1786 was put an end to by a subsequent state of war between Great Britain and Spain; that during that war the boundaries of the British settlement in question were enlarged, and that when peace was re-established between Great Britain and Spain, no treaty of a political nature, or relating to territorial limits, revived those treaties between Great Britain and Spain which had previously existed.

Her Majesty’s government, in stating this fact, declares distinctly, at the same time, that it has no projects of political ambition or aggrandizement with respect to the settlement referred to; and that it will be its object to come to some prompt, fair, and amicable arrangement with the States in the vicinity of British Honduras for regulating the limits which should be given to it, and which shall not henceforth be extended beyond the boundaries now assigned to them.

As to Ruatan and the adjoining islands, all that can be debatable as to them is, whether they are island dependencies of Belize, or attached to some Central American State. Now it cannot be disputed, that whenever Ruatan has been permanently occupied, either in remote or recent times, by anything more than a military guard or flag-staff, the occupation has been by British subjects.

It is true that the republic of Central America declared that it had had a flag flying in that island from 1821 to 1839; but this fact merely rested on that republic's declaration, and all that is positively known is, that when the British government were aware that a foreign flag was flying at Ruatan, a British ship-of-war was sent to haul it down, and since that time no attempt has been made to re-establish it; but, on the contrary, when on two or three occasions complaints have been brought by the citizens of Central American States against the settlers in Ruatan, to the commandant at Truxillo, the commandant has referred them to Belize, telling them that the island was British.

It is, moreover, a fact, that Ruatan has been, of late years, without any instigation on the part of her Majesty's government, spontaneously occupied by British subjects, and that the superintendent of Belize has been in the habit of visiting the island, appointing the magistrates in it, and generally managing its affairs. In going back to ancient times, it is also well known that in 1742 the English were formally settled at Ruatan, and that in the Atlas of the West Indian islands, published by Jeffries, the king's geographer, in 1796, Rattan, or Ruatan, is colored as a British possession; and although this island and that of Bonacea have doubtless been at various times left unoccupied, and at others claimed or held by other powers, it is certain that in 1838, 1839, and 1840, Great Britain not only asserted her right to the same, but declared her intention to maintain that right by force.

These circumstances, without entering further into the subject, will at least prove that the pretensions of Great Britain to consider Ruatan and Bonacea dependencies of Belize is of long standing, and existed certainly at the period of the treaty of 1850. Indeed, Mr. Buchanan, in his statement, observes that Ruatan was occupied in 1850 by Great Britain.

● But if Ruatan was at that time known to be occupied by Great Britain as a settlement of Belize, and the United States government, notwithstanding, considered it to have been a portion of Central America, and thereby comprehended in the treaty, which Belize and its dependencies were not, the United States government would, beyond doubt, have openly stated that it did not consider Ruatan included in the term "island dependencies;" and Great Britain was therefore justified, since no such exception was made, in deeming that her claim to Ruatan as a part of the Belize settlement was not about to be disputed.

Her Majesty's government deems that it has, by the foregoing observations, furnished an adequate reply to the statement of Mr. Buchanan, and proved that the obligations of the treaty have in no respect been infringed. But having performed this duty, her Majesty's government desires to say that it would be far more to its satisfaction to arrange, on fair terms, any differences of opinion with the government of the United States, than to prolong discussion and argument respecting such differences.

It has also no difficulty in adding, that although it did not, by the treaty of 1850, abandon the right of Great Britain to protect the Mosquitos, yet it did intend to reduce and limit the exercise of that right;

the practical difference between Great Britain and the United States with regard to the only mutually important portion of Mosquito, namely, that portion to which the construction and condition of the canal, which formed the origin and basis of the treaty of 1850, applies, is very small indeed. That difference does not turn upon the point whether Great Britain should retain her protection over the port and town of San Juan and the northern bank of that river, but upon the conditions on which that protection should be withdrawn.

In short, the practical question at issue, relative to Greytown and that part of the Mosquito country bordering upon the river San Juan, is not whether Great Britain should, directly or indirectly, exercise dominion over the same, but whether Nicaragua, or some other equally independent State, should obtain possession thereof in a manner consonant with the honorable obligations of Great Britain, the peace of the Central American continent, and the safety from persecution of the Mosquito Indians; or, on the other hand, whether Nicaragua should be put in possession of that territory in a manner almost certain to produce hostilities between Nicaragua and Costa Rica, and to lead to the persecution and destruction of the Mosquito people; an alternative to which Great Britain could not consent, and which the government of the United States could have no motive in requiring.

It is true that, in that more remote portion of the Mosquito territory where the chief or king of the Mosquitos himself resides, a British consul or agent also resides, and this resident may oftentimes be called upon to give his opinion or advice to the Mosquito government, as is usual when weak governments are in alliance with strong ones, more especially when those strong ones have agreed to protect the weak ones from external aggression, and may, therefore, reasonably expect to have such influence over their policy as may prevent them from giving just pretext for invasion.

It is true, also, that Englishmen may thus be in the councils of the king of Mosquito, acting as his ministers; but Englishmen and Americans both hold the same position in the Sandwich islands, the government of which is carried on by foreigners, but is nevertheless (and the race is Indian) considered and treated as independent. To alter this state of things might at the present moment be impossible; but her Majesty's government would be ready and willing to enter into such engagements as should prevent Great Britain from receiving any privileges or advantages from the Mosquito government not granted to other States.

Her Majesty's government can hardly anticipate any difficulty at this time with the United States respecting the continental establishment of Honduras, the limits of which, in 1850, were so well known and can be so easily ascertained, and which will not be extended; but having shown that its pretensions to the islands of Ruatan and Bonacea are of no recent date, and that they were unquestioned by the United States government in 1850, her Majesty's government cannot admit that an alteration in the internal form of government of these islands is a violation of the treaty, or affords a just cause of remonstrance to the United States.

There are at all times two modes of dealing with matters of business between nations, the one calculated to excite mutual irritation, the other to mitigate it; the one tending to prolong and increase differences, the other to diminish and remove them.

The latter is the mode which her Majesty's government earnestly desired in the present instance to adopt and to see adopted, for it can hardly be necessary to say that there is no government with which the people and government of Great Britain more sincerely desire to live in intimate and friendly relations than that of the United States. It is in accordance with the spirit which her Majesty's government thus distinctly avows, that her Majesty's government proposes to that of the United States.

That the two governments of Great Britain and the United States should at once endeavor to come to some friendly understanding as to the government which should be definitively formed at Greytown, in order to admit of the Mosquito authority being withdrawn therefrom; and as to the engagements which such government should enter into with regard to the claims of Costa Rica and the future non-molestation of the Mosquitos; and that the two governments should endeavor, in the same manner, to come to some friendly understanding as to the mode by which protection may be most effectually afforded to the Mosquito Indians.

It is the desire of her Majesty's government not only to maintain the convention of 1850 intact, but to consolidate and strengthen it, by strengthening and consolidating the friendly relations which it was calculated to cement and perpetuate. Her Majesty's government regrets that any misunderstanding should have arisen with respect to its terms; but it entertains the firm belief that, by the explanations it has now given, and the proposals it makes, that misunderstanding will be completely removed.

CLARENDON.

Remarks in reply to Lord Clarendon's statement of May 2, 1854.

UNITED STATES LEGATION,
London, July 22, 1854.

It would not seem necessary to extend these remarks by pointing out what might be deemed inaccuracies in Lord Clarendon's introductory resumé of the points in Mr. Buchanan's statement of January 6, 1854, nor of the order in which these points have been presented. It is sufficient to observe that the sixth and last point of this resumé, embracing the true construction of the convention of April 19, 1850, and which was the first discussed in Mr. Buchanan's statement, being by far the most important, it is entitled to precedence.

The American government cordially reciprocates the desire expressed by that of Great Britain, "to live on intimate terms and friendly relations" with the United States. Strong bonds of interest and affinity ought to unite the two nations in perpetual peace and friendship.

Mr. Buchanan therefore deploras the unhappy misunderstanding which exists between them, in regard to the construction of a convention, which it was believed on the part of the American government would terminate all their pre-existing difficulties in Central America. How unfortunate would it be if this convention, instead of settling, should only complicate these difficulties.

In replying to the British statement, whilst it has become his duty to maintain the proposition that Great Britain has failed to carry into effect the provisions of the convention—a subject in its nature intrinsically delicate—he will endeavor to perform the task in a manner consistent with the exalted respect which he entertains for Great Britain.

The rights and the duties of the parties must be regulated by the first article of the convention of April 19, 1850, and these observations shall, therefore, be primarily directed to the ascertainment of its true meaning. The following is a copy of its text: “The governments of the United States and Great Britain hereby declare, that neither the one nor the other will ever obtain or maintain for itself any exclusive control over the said ship-canal; agreeing, that neither will ever erect or maintain any fortifications commanding the same, or in the vicinity thereof, or occupy, or fortify, or colonize, or assume or exercise any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America; nor will either make use of any protection which either affords, or may afford, or any alliance which either has or may have, to or with any State or people, for the purpose of erecting or maintaining any such fortifications, or of occupying, fortifying, or colonizing Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America, or of assuming or exercising dominion over the same; nor will the United States or Great Britain take advantage of any intimacy, or use any alliance, connexion, or influence that either may possess, with any state or government through whose territory the said canal may pass, for the purpose of acquiring or holding, directly or indirectly, for the citizens or subjects of the one, any rights or advantages in regard to commerce or navigation through the said canal, which shall not be offered on the same terms to the citizens or subjects of the other.”

In the course of these remarks, it is proposed to maintain that this article requires Great Britain to withdraw from the possession of Ruatan and the other Bay islands, the Mosquito coast and the territory between the Sibun and the Sarstoon. The Belize settlement will demand a separate consideration.

What, then, is the fair construction of the article? It embraces two objects: 1. It declares that neither of the parties shall ever acquire any exclusive control over the ship-canal to be constructed between the Atlantic and the Pacific by the route of the river San Juan de Nicaragua, and that neither of them shall ever erect or maintain any fortifications commanding the same or in the vicinity thereof. In regard to this stipulation, no disagreement is known to exist between the parties. But the article proceeds further in its mutually self-denying policy, and in the second place declares that neither of the parties will “occupy or fortify, or colonize, or assume, or exercise

any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America."

We now reach the true point. Does this language require that Great Britain shall withdraw from her existing possessions in Central America, including "the Mosquito coast?" The language peculiarly applicable to this coast will find a more appropriate place in a subsequent portion of these remarks.

If any individual enters into a solemn and explicit agreement that he will not "occupy" any given tract of country then actually occupied by him, can any proposition be clearer, than that he is bound by his agreement to withdraw from such occupancy? Were this not the case, these words would have no meaning, and the agreement would become a mere nullity. Nay, more; in its effect it would amount to a confirmation of the party in the possession of that very territory which he had bound himself not to occupy, and would practically be equivalent to an agreement that he should remain in possession—a contradiction in terms. It is difficult to comment on language which appears so plain, or to offer arguments to prove that the meaning of words is not directly opposite to their well-known signification.

And yet the British government consider that the convention interferes with none of their existing possessions in Central America; that it is entirely prospective in its nature, and merely prohibits them from making new acquisitions. If this be the case, then it amounts to a recognition of their rights, on the part of the American government, to all the possessions which they already hold, whilst the United States have bound themselves by the very same instrument never, under any circumstances, to acquire the possession of a foot of territory in Central America. The mutuality of the convention would thus be entirely destroyed; and whilst Great Britain may continue to hold nearly the whole eastern coast of Central America, the United States have abandoned the right for all future time to acquire any territory, or to receive into the American Union any of the States in that portion of their own continent. This self-imposed prohibition was the great objection to the treaty in the United States at the time of its conclusion, and was powerfully urged by some of the best men in the country. Had it then been imagined that whilst it prohibited the United States from acquiring territory, under any possible circumstances, in a portion of America through which their thoroughfares to California and Oregon must pass, the convention, at the same time, permitted Great Britain to remain in the occupancy of all her existing possessions in that region, Mr. Buchanan expresses the confident conviction that there would not have been a single vote in the American Senate in favor of its ratification. In every discussion, it was taken for granted that the convention required Great Britain to withdraw from these possessions, and thus place the parties upon an exact equality in Central America. Upon this construction of the convention there was quite as great an unanimity of opinion as existed in the House of Lords, that the convention with Spain of 1786 required Great Britain to withdraw from the Mosquito protectorate.

There is the strongest reason to believe that the same construction was placed upon the convention, by the government of Great Britain,

at the time of its conclusion. If this were not the case, why their strenuous efforts, before the ratifications were exchanged, to have the British settlement of Belize specially excepted from its operation? Upon the opposite construction of the convention, it ought to have been their desire to place that settlement under its protection, and thus secure Great Britain in its occupancy.*

The conduct of the government of Great Britain, on this occasion, can be satisfactorily accounted for only upon the principle that, perceiving the language of the convention to be sufficiently explicit and comprehensive to embrace Belize, they must have made these efforts to prevent the necessity of their withdrawal from that settlement. And as no attempt was made to except any other of their possessions from its operation, the rule that *expressio unius est exclusio alterius* applies to the case, and amounts to an admission that they were bound to withdraw from all their other Central American possessions.

If this be the true construction of the convention, as well as its manifest spirit, then let us apply it to the object it was intended to embrace. And first of Ruatan—thus, for the present, disembarassing ourselves from the Mosquito protectorate.

It is not denied by the British statement, that Ruatan "is clearly a Central American island," "and but thirty miles distant from the [Honduras] port of Truxillo." Indeed, it was impossible that this could be denied. Why, then, is this island not embraced by the convention? The only reason given for it is the allegation that Ruatan and the adjacent islands were dependencies of Belize, and were protected from the operation of the convention by Mr. Clayton's declaration of the 4th July, 1850. Now admitting, for the sake of argument, that this declaration is binding on the United States; to what does it amount? Its language is very explicit. The convention was not understood by either of the negotiators, says Mr. Clayton, "to include the British settlement in Honduras, (commonly called British Honduras, as distinct from the State of Honduras,) nor to the small islands in the neighborhood of that settlement which may be known as its dependencies."

"The small islands in the neighborhood of that settlement"—What are they? These are undoubtedly Cayo Casina and "the cluster of small islands" on the coast, at the distance of "three leagues from the river Sibon," particularly specified in the British convention with Spain of 1786. Indeed, the same construction would seem clearly to have been placed upon this convention by the British minister at Washington, in his letter to Mr. Clayton of the 7th of January, 1854, a copy of which is doubtless in the possession of Lord Clarendon. It would be a strained construction of Mr. Clayton's carefully guarded language to make his "small islands in the neighborhood" embrace the comparatively large and very important island of Ruatan, with its excellent harbors, not in the neighborhood, but hundreds of miles distant; an island represented "as the key of the Bay of Honduras and the focus of the trade of the neighboring countries," which is considerably larger, according to Captain Henderson, than many of the West India islands in cultivation; and in its soil and natural advantages not inferior to any of them. This would be to make the

dependency far more valuable than the principal, and to engraft an absolute sovereignty upon a mere usufruct. And here it may be proper to observe, that the quotation "island dependencies" in the British statement, if intended to be made from any part of Mr. Clayton's declaration, is an incorrect quotation. His language is not "island dependencies," but "small islands in the neighborhood of Belize." This island is, then, clearly a Central American island in the neighborhood, not of Belize, but of the State of Honduras; and in the language of Mr. Clayton's statement, so much relied upon, is one of "the proper dependencies" of that State, and is therefore embraced by the treaty. Indeed, it would be little short of an absurdity for Mr. Clayton to have excepted, as it is contended he ought to have done, from his declaration, including only "the small islands in the neighborhood" of Belize, the distant, large, and valuable island of Ruatan. And yet it is alleged, from his omission to do this, that Great Britain was justified "in deeming that her claim to Ruatan as a part of the Belize settlement was not about to be disputed."

The British statement seems to attach considerable importance to the fact, but why it is difficult to conceive, that "Mr. Buchanan in his statement observes that Ruatan was occupied in 1850 by Great Britain." It was for the very reason that not only Ruatan, but nearly the whole eastern coast of Central America, were occupied by Great Britain, that the government of the United States were so anxious to conclude a convention requiring her to withdraw from this occupation. It was for this reason that the United States, as an ample consideration for this withdrawal, bound themselves never to occupy any portion of Central America. But for this agreement to withdraw, the United States, in self-defence, would have been compelled to accept cessions of territory in Central America; because, without such territory, Great Britain would have been left in a position absolutely to command not only the projected canal by the Lake Nicaragua, but all other canals and railroads which may be constructed through any part of the isthmus. The convention was, therefore, not confined to this single route, but extended its protection "to any other practicable communications, whether by canal or railway, across the isthmus which connects North and South America." Both parties were to stand aloof, and neither of them was to occupy territory in the vicinity of any of these routes; much less an island, which, from its position and excellent harbors, would enable a strong naval power in possession of it to close any canals or railroads which might be constructed across the isthmus.

Now, whether Great Britain was in the occupation of Ruatan at the date of the convention by a good or by a bad title, cannot make the least difference in regard to the construction of that instrument. The case might have been different had the question arisen between her and the State of Honduras. The question between the United States and Great Britain, however, is not as to the validity of her title, but, no matter what it may have been, whether she has not agreed to abandon her occupation under this title. Not what was the state of things before, but what she agreed it should become after the conclusion of the convention. Still, out of deference to the British state-

ment, which contends that the British title was good to this island at the conclusion of the convention, it is but proper to examine the reasons on which this claim was founded.

Ancient possession is invoked to sustain this claim, and it is said that "it is well known that [in] 1742 the English were formally settled at Ruatan;" but, in reply, it may be stated that this possession was speedily abandoned. We are informed by Rees's Cyclopædia, published in London in 1819, that "the English in the year 1742 formed a settlement here [in Ruatan] for the purpose of carrying on the logwood trade, *but it was soon abandoned.*"

In answer to the map published by Jeffries in 1796, cited by Lord Clarendon, it may be observed that there is another copy of the very same map in the British Museum, published in the same year, on which Ruatan is not colored as a British possession. At the date of this map, more than a half a century ago, the geography of that portion of America was comparatively but little known. For this reason, the map published at London in 1851, "by James Wyld, geographer to the Queen," "of the West India and Bahama islands, with the adjacent coasts of Yucatan, Honduras, Caraccas," &c., also to be found in the British Museum, is of much higher authority, and upon its face Ruatan and the other Bay islands are assigned to Honduras. The same view is presented by the same author on a former "map of the West India and Bahama islands," &c., published in 1849, and now in possession of the legation.

It may also be confidently asserted as a well-known historical fact, that if the English were in the occupation of Ruatan at the date of the treaty with Spain of 1786, they abandoned it immediately thereafter in obedience to that treaty. Brook's General Gazetteer, published in London in 1853, distinctly states this fact. It says, "this beautiful island, partially covered with wood, was once in possession of the English, who fortified its excellent harbor, *but abandoned it when they withdrew from the Mosquito shore.*" And Johnson, in his Dictionary of Geography, published in London in 1851 and 1852, describes it as an island off the north coast of Central America, "*formerly belonging to the English.*"

"Near its southern extremity is a good harbor, with batteries erected by the English during their former occupation."

At what period, then, after the convention of 1786, did this island cease to be Spanish and become English? It is admitted by Captain Henderson, an officer of the British army, in his account of the British settlement of Honduras, an authority which will not be disputed, that it was still a Spanish island in 1804. The next we hear of it is that it was in the possession of Honduras, as the successor of Spain, in 1830, whilst the confederation of the Central American States still continued to exist; and was in that year (not in 1835, as in the former statement) captured from that State by the British forces, but was soon afterwards restored. The following extract from Crowe's "Gospel in Central America," an able and interesting work, prepared after personal observation, and published in London in 1850, gives a correct account of the transaction. The author says, 1830: "The only notable breach upon peace and good order was the seizure

of the island of Ruatan, in the bay of Honduras, by the authorities of the neighboring British settlement. But upon complaint by the federal government, the act of the superintendent of Belize was theoretically disallowed by his government, though it has since been practically repeated in precisely the same quarter and under the sanction of the same power." There is other evidence of a similar character in possession of Mr. Buchanan; but as it proceeds from American sources, it is deemed best to let the facts, especially as they have not been contradicted by the British statement, rest upon the authority of a British author of highly respectable character. The author then proceeds to speak in indignant terms of its second capture and annexation in 1841, denouncing it as an "inglorious revolution."

Lord Clarendon, in his statement, admits that this island and that of Bonacca "have doubtless been at various times left unoccupied, and at others claimed or held by other powers;" but says, "it is certain that in 1838, 1839, and 1840, [it ought to have been in 1841,] Great Britain not only asserted her right to the same, but declared her intention to maintain that right by force."

That is, in substance, that Great Britain captured this island from Honduras in 1841, and expelled the troops of that State from it, and now maintains that this capture gives her title. It is impossible that Great Britain can claim this island by the right of conquest, because the capture was made in a time of profound peace. She cannot convert the very act of which Honduras complains as a wrong and an outrage, into the foundation of British title. Of the manner in which the seizure of Ruatan was made by the superintendent of Belize, in 1841, Mr. Crowe speaks in the following language:

"As he expected, Colonel McDonald found only a few inhabitants, under care of a sergeant, and a small detachment of soldiers belonging to the State of Honduras. These being incapable of resistance, he proceeded to haul down the flag of the republic, and to hoist that of Great Britain in its stead. No sooner, however, had he re-embarked, than he had the mortification of seeing the Union Jack replaced by the blue and white stripes of Honduras. He subsequently returned and completed the inglorious revolution, by taking such precautions and making such threats as he thought necessary."

The British statement contests the principle, that the Central American provinces, having by a successful revolution become independent States, succeeded, within their respective limits, to all the territorial rights of Spain.

As the statement presents no reason for denying this principle; it is not deemed necessary to assign reasons in its support in addition to those of the former American statement. The principle cannot, it is conceived, be successfully controverted. Were any third power permitted to interpose and seize that portion of territory, which the emancipated colony could not defend, all powers might exercise the same right, and thus the utmost confusion and injustice would follow. If Great Britain could seize Ruatan, France might have taken possession of another portion of Honduras, and the United States of a part of San Salvador; and thus a successful revolution, instead of proving a benefit to those who had asserted and maintained their

independence, would give rise to a general scramble among the nations for a proportion of the spoil.

But the British statement not only denies that her treaty with Mexico of the 26th of December, 1826, is a recognition of the principle asserted, but maintains that it proves the contrary.

At the date of this treaty Great Britain was in possession, for special purposes, of the usufruct of Belize, which she had acquired from Spain under the treaty of 1786. Upon what other principle could she have solicited and obtained from Mexico an agreement that British subjects should not be disturbed in the enjoyment of this limited usufruct, unless upon the principle that Mexico had inherited the sovereign rights of old Spain over the Belize settlement? Had she then intended to claim this settlement in absolute sovereignty, she never would have sought and obtained from Mexico a continuance of her special license. The idea of an absolute owner asking a special permission to use his own property in a particular manner, from a person in whom he recognises no title, would be, to say the least, a novelty, if not an absurdity. Greatly to her credit and her good faith, however, Great Britain agreed to hold under Mexico in the very same manner she had held under old Spain, and thus clearly recognised the rights of Mexico.

How does the British statement answer this argument? It says that the treaty "simply stipulated that British subjects should not be worse off under Mexico independent, than under Mexico when a Spanish province." And "it was natural, in recognising the independence of Mexico, that Great Britain should make such a stipulation." It was certainly natural that she should do this, but only on the principle that Mexico might otherwise have asserted her rights as the successor of old Spain, and at any moment have terminated the license.

The British statement observes, that, since the capture of the island in 1841, no attempt has been made by Honduras to recapture it; and that the commandant of Truxillo, when on two or three occasions complaints had been made to him for redress against the settlers of Ruatan, had referred them to Belize, telling them that the island was British. But what inference can be drawn from these facts? Honduras, from her feebleness, has been compelled to submit, and to resort to the only remedy which the weak have against the powerful. Complaints and protestations against the act, which she has never ceased to make, have been her only resource. How ridiculous it would have been for her to have attempted to recapture this island from Great Britain! And the commandant of Truxillo would, as a matter of course, refer complaints against the settlers in Ruatan to Great Britain for redress—the power in possession, and the only power in existence which could apply the remedy.

If, therefore, the question depending had been between Great Britain and Honduras, and the point to be decided by an impartial umpire were, which of the two powers held the best title to the island, there could be but little doubt, it is conceived, what would be his decision. But, as before remarked, the question is not between these parties, but between Great Britain and the United States. Its decision does not depend upon the validity or invalidity of the British title, but whether Great Britain has bound herself by treaty with the United States not

"to occupy, or fortify, or colonize, or assume or exercise any dominion over" Ruatan. Under these circumstances, it was not the duty of the United States, as is alleged, at the conclusion of the convention of 1850, to have formally contested the title of Great Britain to this island. Such a course could only have produced useless irritation. It was sufficient for them to know that Great Britain, being in the occupation of it, no matter by what title, had agreed to withdraw from this occupation.

But "her Majesty's government cannot admit that an alteration in the internal form of government of these islands is a violation of the treaty, or affords a just cause of remonstrance to the United States." What are the facts of the case? When the treaty was concluded, Great Britain was simply in the occupation of Ruatan, under the capture made by Colonel McDonald. She had established no regular form of government over its few inhabitants, who, to say the least, were of a very heterogeneous character. She had then taken but the first step, and this in the face of the remonstrances of Honduras, towards the appropriation of the island. No trouble could have been anticipated by the United States in regard to this island. No doubt could have been entertained but that Great Britain would promptly withdraw from it after the conclusion of the treaty. Her relation towards Ruatan at this time was merely that of a simple occupant. From this occupancy it was easy to retire, and the island would then have naturally reverted to Honduras. Instead, however, of taking one step backward, the government of Great Britain has since taken a stride forward, and has proceeded to establish a regular colonial government over it. But this is not all. They have not confined themselves to Ruatan alone, but have embraced within their colony five other Central American islands off the coast of the State of Honduras. One of these, Bonacea, says Bonnycastle, is an island about sixty miles in circumference, and is supposed to be the first island which Columbus discovered on his fourth voyage. It was not known, however, in the United States that the British government had ever made claim to any of these five Central American islands previous to the proclamation announcing their colonization. Indeed, the British statement nowhere asserts that any of them had ever been occupied at any period by Great Britain before their incorporation with Ruatan and the establishment in 1851 of the colony of the "Bay islands."

In this manner has the feeble State of Honduras been deprived of every valuable island along her coast, and this is now completely commanded by the impending power of Great Britain.

The government of the United States view the establishment of the colony of the "Bay islands" in a still more unfavorable light than they do the omission on the part of the British government to carry the provisions of the treaty into effect. They feel this to be the commission of a positive act in "palpable violation both of the letter and spirit of the Clayton and Bulwer convention."

2. *The Mosquito Protectorate.*

It does not seem necessary to add arguments to those of the former American statement for the purpose of proving that the Mosquito pro-

tectorate has been abolished by the convention. This point has nowhere been directly met throughout the British statement, by arguments drawn from the body of the treaty itself. These remarks shall, therefore, be confined to the topics presented in the British statement.

In this discussion, as in the case of the Bay islands, it ought ever to be borne in mind that it is the true construction of the convention which is mainly to be ascertained and enforced, and not the historical circumstances and events which either preceded or followed its conclusion.

The admission is noticed with satisfaction, that the United States had not, under the convention, acknowledged the existence of the British protectorate in Mosquito. This relieves the argument from much embarrassment, and the American negotiator from the imputation of having done an act which would have been condemned by his country.

It is also repeatedly admitted, that although the British government (to employ its own language) "did not, by the treaty of 1850, abandon the right of Great Britain to protect the Mosquitos, yet it did intend to reduce and limit that right." Had the statement proceeded one step further, and specified in what manner and to what extent the British government intended to reduce and limit this right, the controversy on this point might then, for all practical purposes, have been settled. Why? Because Lord Clarendon must have resorted to the convention itself for the limitations imposed on the protectorate; and this would have informed him that it shall never be used for the purpose of "occupying" "the Mosquito coast," "or of assuming or exercising dominion over the same." Let Great Britain no longer employ it for these purposes; let her cease to occupy this coast and exercise dominion over it, and although not all the convention requires, yet for every essential object this would prove sufficient.

The British statement, strangely enough, first proceeds to discuss at considerable length, what it terms "the spirit" of the treaty, which, it says, "must always be inferred from the circumstances under which it takes place;" and afterwards, in a very few lines, disposes of the great question of the true construction of its language. This entirely reverses the natural order of things. Vattel informs us, in his chapter on "The Interpretation of Treaties," that "the first general maxim of interpretation is, that it is not allowable to interpret what has no need of interpretation. When a deed is worded in clear and precise terms, when its meaning is evident and leads to no absurd conclusion, there can be no reason for refusing to admit the meaning which such deed naturally presents. To go elsewhere in search of conjectures in order to restrict or extend it, is but an attempt to elude it. If this dangerous method be once admitted, there will be no deed which it will not render useless."

It was, therefore, incumbent upon the British statement first to prove that the language of the convention is obscure, (a most difficult task,) before it could properly resort to extraneous circumstances to explain its meaning. Nevertheless, following the order of the statement, a reply shall first be given to the circumstances adduced.

But, as preliminary to these, the statement branches off into a declaration "that Mr. Buchanan confounds the two conditions of a sovereignty and a protectorate, and under this error treats the agreement 'not to colonize, nor occupy, nor assume, nor exercise dominion over,' as including an agreement not to protect." Now admitting, for the sake of argument, that these words do not include "an agreement not to protect;" they do at least limit this protection, so that it cannot be employed for the purpose of occupying or exercising dominion over the Mosquito coast. Let this be granted, and the United States need ask but little more.

No foundation, however, is to be found in Mr. Buchanan's statement for the criticism, that he had confounded two things so distinct in their nature as "a sovereignty and a protectorate." Indeed, he does not even use the word "sovereignty" in connexion with this topic, throughout his whole statement. On the contrary, he has carefully confined himself to the language of the convention itself, and employed only the words "occupy" "or assume or exercise dominion."

The American government have never treated the protectorate claimed by Great Britain as one which could be recognised by public law. They well knew, from the savage and degraded character of the Mosquito Indians, that no treaty of protection could exist between her Britannic Majesty and the king of the Mosquitos, such as is recognised among civilized nations. Under such a treaty, the protected power reserves to itself the right of administering its own government—a right which it was impossible for the Mosquitos to exercise.

This nominal protectorate must, therefore, from the nature of things, be an absolute submission of these Indians to the British government, which, in fact, it has ever been. For these reasons, the American statement has everywhere treated Great Britain as in possession of the Mosquito coast, and in the exercise of dominion over it, in the same manner as though she were its undisputed owner; and has contended that she is bound by the treaty to withdraw from this possession and the exercise of this dominion. This is the substance. All the rest is mere form. In this point of view, it is wholly immaterial whether the relations of the Mosquito Indians towards Great Britain be called a protectorate, a submission, or by any other name. The great object of the convention, as understood by the government of the United States, is, that she should cease to occupy the Mosquito coast, no matter by what name, or under what claim it is retained.

The leading—indeed, it may almost be said the only—circumstance adduced to illustrate "the spirit" of the convention, and to bear upon its construction, is a correspondence which took place at London, in November, 1849, between Mr. Lawrence and Lord Palmerston. It is thus sought to convert this preliminary correspondence, which occurred months before the convention was concluded, between different individuals, into the means of changing and limiting the meaning of the language afterwards employed by the actual negotiators. By such means, all agreements between private parties, and all treaties between sovereign States, might be annulled. When the final agree-

ment is once concluded, the preliminaries become useless. Like the scaffolding of a building, they are cast aside after the edifice has been erected.

But even if such a process were legitimate, there is nothing in this correspondence which, so far from weakening, does not fortify the construction placed upon the convention by the government of the United States. Mr. Lawrence first asks Lord Palmerston, as the primary object, "whether the British government intends to occupy or colonize Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America?" and then inquires "whether the British government will unite with the United States in guarantying the neutrality of a ship-canal, railway, or other communication, to be opened to the world and common to all nations?" In reply, Lord Palmerston says, "that her Majesty's government do not intend to occupy or colonize Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America;" and he also gave an equally satisfactory answer to the second inquiry of Mr. Lawrence.

Now, what inference does the British statement draw from this language? It is, that as the correspondence, which is alleged to have been before the negotiators, does not refer to the Mosquito protectorate by name, therefore they must have intended that this should remain untouched by the treaty. But no inference can prevail against a positive fact. If the correspondence be silent in regard to the protectorate, not so the convention. This expressly embraces it, and declares, "nor will either (of the parties) make use of any protection which either affords, or may afford, or any alliance which either has or may have, to or with any state or people, for the purpose (of erecting or maintaining any such fortifications or) of occupying, fortifying, or colonizing Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America, or of assuming or exercising dominion over the same."

But even if the convention had not contained this express stipulation in regard to the Mosquito protectorate, and had simply provided for carrying into effect the intention expressed by Mr. Lawrence and Lord Palmerston, that neither of the parties should "occupy or colonize" "the Mosquito coast," this would, it is conceived, have been abundantly sufficient to bind Great Britain to withdraw from its occupation. In point of fact, it resulted from abundant caution alone that the clause just quoted from the convention was superadded, prohibiting Great Britain, whether under the name of a "protection" or "alliance," from "occupying" "the Mosquito coast," "or of assuming or exercising dominion over the same."

In reference to the "literal meaning of the convention," which is certainly the main point, the British statement occupies but a few lines, and avoids any direct discussion of the language which it employs. Indeed, the construction for which the government of the United States contends is substantially admitted. The statement, after quoting the provisions of the article, and asserting that it "clearly acknowledges the possibility of Great Britain or the United States affording protection to Mosquito, or any Central American State," concedes that whilst it was not the intention of the parties to

prohibit or abolish, it was their intention "to limit and restrict such protectorate." Let there be no dispute about words on so grave a question. How did the convention limit and restrict this protectorate? It does this, as before observed, by prohibiting both parties from using "any protection which either affords" for the purpose of occupying or exercising dominion over the Mosquito coast.

Throughout that portion of the argument arising out of the correspondence between Mr. Lawrence and Lord Palmerston, and indeed in other parts of it, the British statement has treated the joint protection of the two governments to the Nicaragua canal as though this were the principal and almost the only feature of the convention. Such expressions as these are employed: "The mere protectorate of Great Britain, stripped of those attributes which affected the construction and the freedom of the proposed canal, was of small consequence to the United States." It is again treated as "a matter of indifference, so far as the canal is concerned, as to whether the port and town of San Juan are under the modified protectorate of Great Britain or under the government of Nicaragua." And again: "The practical difference between Great Britain and the United States, with regard to the only mutually important portion of Mosquito—namely, that portion to which the construction and condition of the canal, which formed the origin and basis of the treaty of 1850, applies—is very small indeed," &c., &c.

These are but very partial and limited expositions of the motives which gave birth to the convention. It consecrated a policy far more extended and liberal. The convention was not confined to a single route, but embraced all the routes, whether for railroads or canals, throughout Central America. To employ its own language, it agreed to extend the protection of the two governments, "by treaty stipulations, to any other practicable communications, whether by canal or railway, across the isthmus which connects North and South America, and especially to the inter-oceanic communications, should the same prove to be practicable, whether by canal or railway, which are now proposed to be established by the way of Tehuantepec or Panama." Over all such routes, Great Britain and the United States have bound themselves to cast the ægis of their protection, not for their own exclusive benefit, but for that of all the commercial nations of the earth. It was to avoid all jealousies between themselves, as well as those which might arise against either or both on the part of other nations, that they agreed, not merely that neither of them would erect fortifications on the single route of the San Juan, or in its neighborhood, but also, that neither would directly, or by virtue of any protectorate or alliance, "occupy, or fortify, or colonize, or assume or exercise any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America." Without this latter provision the former would have been vain. The prohibition of occupation was, therefore, co-extensive with the whole territory over which such canals or railroads might pass.

Viewing the treaty in the light of its own extended and liberal provisions, it was a matter of some surprise that the British statement should have confined itself merely to a proposition for the two govern-

ments to enter into some arrangement whereby Great Britain may withdraw her protectorate from the port and harbor of Greytown and the northern bank of the San Juan, thus leaving the residue of the Mosquito coast in its present condition.

The government of the United States can become a party to no such arrangement. It stands upon the treaty which it has already concluded, firmly believing that, under this, Great Britain should, more than four years ago, have ceased to occupy or exercise dominion over the whole and every part of the Mosquito coast. It cannot, therefore, now enter into any new stipulation confined to the port of Greytown and the northern bank of the San Juan. Such an agreement could only lead to fresh complications; and besides, would be a tacit admission, which the United States cannot make, that the convention of 1850 did not embrace the entire Mosquito coast, as well as every other portion of Central America. All that the government of the United States deem it proper to do under existing circumstances, is to persist in their efforts to induce Great Britain to withdraw from the entire coast. This object once accomplished, the treaty will then have its full and beneficent effect. The two powers can then proceed in harmony to procure from the proper Central American States the establishment of two free ports, one at each end of the canal, and successfully to interpose their good offices to settle all existing disputes concerning boundaries between these States. It is manifest, however, that nothing of this kind can be accomplished—there can be no settlement of Central American affairs—whilst Great Britain shall persist in expressing a determination to remain in possession, under the name of a protectorate, of the whole coast of Nicaragua on the Caribbean sea.

The Earl of Clarendon has been already informed that the government of the United States, from motives of humanity, are willing to unite with Great Britain in inducing the State of Nicaragua to assign a suitable portion of her territory for the occupation of the miserable remnant of the Mosquito tribe. This, however, upon the principle always recognised by Great Britain and the United States, in the treatment of their own Indians, that the ultimate dominion and absolute sovereignty belong to Nicaragua; the Mosquitos having a right of mere occupancy, to be extinguished only by the State of Nicaragua.

How unfortunate is the condition of Nicaragua! Her title to all the territory embraced within the limits of the ancient province of that name is perfect. This she has acquired, not only by a successful revolution, but she holds it under a solemn treaty with Spain. This treaty, concluded at Madrid on the 25th of July, 1850, recognises her sovereignty and independence, as well as her right "over the American territory situated between the Atlantic and Pacific seas," and "from sea to sea," "with its adjacent islands, known before under the denomination of province of Nicaragua, now republic of the same name." And yet her eastern coast is covered in its whole extent by the Mosquito protectorate, and she is deprived of every outlet to the Caribbean sea. Her port of San Juan has been seized by British troops, and that of Bluefields is the residence of the king of the Mosquitos, and the seat of the British dominion.

An effort has been made to assimilate the case of the British protectorate over the Mosquitos to that of Englishmen and Americans acting as ministers to the king of the Sandwich islands. But there is no parallel between the cases. The inhabitants of the Sandwich islands are not degraded savages, but a Christian people; and the government of their king has been recognised by the principal powers of the earth. He possesses the right to select foreigners for his ministers, as other sovereigns have frequently done; but these, in the exercise of their functions, are totally independent of their own governments.

It is alleged that a British consul or agent resides in Mosquito, who "may oftentimes be called upon to give his opinion or advice to the Mosquito government." But it is notorious—and from the degraded character of the Indians it cannot be otherwise—that the Mosquito government is exclusively the British government, exercised through the agency of this consul. It is through him that the British government, in the name of this mere shadow of a king, captures the sea-ports of his neighbors by the employment of British forces alone, and exercises dominion over the entire so-called Mosquito coast. We have the nothingness of the Mosquito government and the king graphically delineated by two eminent British statesmen of the present cabinet. Truly this government is but a "*fiction*," whilst that of Great Britain is the substantial reality.

The British statement, after defining the general distinction between "sovereignty" and "defence or protection," presents the consequences which might arise if an agreement "not to occupy or exercise dominion over" should prohibit either party from the performance of certain enumerated acts, either for or against the Central American States. As these remarks are merely hypothetical, and do not seem to have any direct bearing upon the great question pending between the parties, it is deemed unnecessary to prolong this statement by a reply to them *seriatim*. They may be well or ill-founded; but it is inconceivable in what manner they bear upon the simple question under the treaty, which is, shall Great Britain continue to occupy or exercise dominion over the Mosquito coast? not what acts she may perform, without a violation of the convention, after she shall have withdrawn from this occupation and the exercise of this dominion.

Opinions are referred to, said to have been expressed by Mr. Webster, concerning the convention; but this is to be expounded according to its own text, and not by the mere incidental dicta of any man, no matter how eminent.

And here all has been said which either directly or remotely touches the merits of the Mosquito question; but as several other topics have been introduced, it would be improper to pass them over in silence.

The statement declares, in reference to the Mosquito protectorate, that Great Britain "will not enter into any explanation or defence of her conduct with respect to acts committed by her nearly forty years ago." Be it so. Such an explanation is not solicited by the United States. Still it is but just to observe that the British government first set the example of discussing their ancient right to the Mosquito protectorate; and this is the only reason given in the former Ameri-

can statement for presenting "the views of the government of the United States on the subject."

It is highly satisfactory, however, to observe that the British statement, instead of relying upon acts of the English on the Mosquito coast for centuries, limits these within a period of less than forty years anterior to the present date. It is possible that the former American statement may have done some good in effecting this change, by causing Lord Clarendon to re-examine the treaties of 1783 and 1786, and to refer to the history of the time, in which additional proof has been found, not now necessary to be presented, in confirmation of the construction placed upon these treaties by the American government.

It would still have been interesting, as an historical fact, to learn at what time, "nearly forty years ago," under what circumstances, and upon what terms, Great Britain again entered upon Mosquito, after having acknowledged the sovereignty of Spain over it in 1783 and 1786, and surrendered it to that power.

The British statement proceeds to allege that, since the peace of 1815, old Spain had never raised any question with the British government respecting the Mosquito protectorate. This is doubtless the case, because old Spain, from the intimate relations of friendship which had existed between the two governments since their treaty of alliance in 1809, could not have suspected that Great Britain was renewing her connexion with the Mosquitos; and soon after "the acts committed by her nearly forty years ago," the Spanish American revolutionary war commenced, which would naturally prevent the Spanish government from bestowing its attention on a matter so comparatively unimportant.

The statement then denies that, by the British treaty with Mexico of 1826, Great Britain had recognised the right of the Central American States, having achieved their independence, to the territories respectively included within their boundaries, as these had formerly existed under old Spain. As this point has been discussed in a former portion of the present statement, it is not now necessary to add anything to what has already been said.

But, again, argues the British statement, even supposing that these States did inherit the right of old Spain, they made no remonstrance "for many years after the protectorate of Great Britain over Mosquito had been a fact well known to them."

Surely the British government does not mean to contend that the omission of these feeble States, agitated in the first place by a revolutionary war, and afterwards by domestic dissensions, to make such remonstrances, would confer upon Great Britain the right to deprive them of their territory? Besides, if it were necessary to go into the question, it might be proved that not many, but only a few years had elapsed before these States did remonstrate against the encroachments of Great Britain.

The statement next asserts, that although the government of the United States, in 1842, knew of the existence of the British protectorate, yet they did not complain of it until 1849. And from this what is to be inferred? The United States had no right, under any treaty

with Great Britain, to interfere in this question until April, 1850. But even if they had been directly interested in the territory, as Nicaragua was, is there any statute of limitations among nations, which, after six years of unlawful possession, deprives the true owner of his territorial rights?

Had the United States interfered in this question before the conclusion of the convention of 1850, this could only have been done under the Monroe doctrine; and then they would have been informed, as they have already been in the British statement, that this doctrine "can only be viewed as the dictum of the distinguished personage who delivered it; but her Majesty's government cannot admit that doctrine as an international axiom which ought to regulate the conduct of European states."

But it must not be inferred from what has been said, that without this convention the government of the United States would not have eventually interfered, in obedience to the Monroe doctrine, to prevent, if possible, any portion of Central America from being permanently occupied or colonized by Great Britain.

Neither is Lord Clarendon correct in supposing that this doctrine is but the mere "dictum" of its distinguished author. True, it has never been formally sanctioned by Congress; but when first announced, more than thirty years ago, it was hailed with enthusiastic approbation by the American people; and since that period, different Presidents of the United States have repeated it in their messages to Congress, and always with unmistakable indications of public approbation.

If the occasion required, Mr. Buchanan would cheerfully undertake the task of justifying the wisdom and sound policy of the Monroe doctrine, in reference to the nations of Europe, as well as to those on the American continent.

The British statement proceeds to enumerate several instances, commencing in November, 1847, extracted from the report of Mr. Clayton to the President, in July, 1850, in which no answers were returned by the government of the United States to appeals made by or on behalf of the State of Nicaragua for our interference to arrest the progress of British encroachments in Central America.

Surely the war then pending between the United States and Mexico was sufficient to account for this temporary omission, without attributing it to any indifference to the proceedings of Great Britain against Nicaragua.

But even before this war was finally terminated by a treaty of peace, and after the capture of San Juan by the British forces, President Polk in April, 1848, gave a public pledge to the world, in strong terms, of his adherence to the Monroe doctrine, as he had already done in two previous messages. Besides, in December, 1847, he asked an appropriation from Congress to enable him to send a minister to Guatemala; and this minister was accordingly despatched, with instructions which have been published, having distinctly in view the adoption of measures necessary to give effect to this doctrine in Central America.

The British statement, while admitting that, under the former principles and practice of European nations in regard to their treatment of

the Indian races, the Mosquitos would have no right to rank as an independent state, yet indicates that Great Britain has changed her conduct in this respect. As examples of great changes in other respects which have occurred in modern times, and as an excuse or justification for her own change, the British statement cites the suppression of the African slave-trade, and the establishment of the republic of Liberia. Neither of these would seem to be very wonderful. They both occurred in the natural progress of events, from the advance of civilization and the efforts of wise and benevolent men. But the British government will have performed a miracle if they can convert the debased and degraded race of Mosquito Indians, such as they have been described without contradiction in the American statement, into citizens or subjects of a really independent and sovereign nation.

The British statement also declines to furnish "the grounds on which her Majesty's government made the capture of San Juan de Nicaragua," and it is therefore scarcely necessary to pursue this branch of the subject. If it were, it would be easy to add proofs to those contained in the former American statement, that this was never a Mosquito port, in any sense, but always, together with the river San Juan, rightfully belonged to Spain, and afterwards to Nicaragua. Reference might be made to the report of Sir William Wise, the commander of the British ship-of-war *Sophie*, who visited the coast in 1820, and also to that of Mr. Orlando Roberts, who was carried as a prisoner up the San Juan in 1821. The latter describes the fort to which Captain Bonnycastle had referred, as then still mounting twelve large pieces of cannon, and containing accommodations for one hundred men. The two chapters of Crowe's *Central America*, entitled "British Encroachments," might also be cited. Of these the author presents a striking history, from the time of the numerous and formidable but unsuccessful expedition of Great Britain against Spain in 1780, for the purpose of wresting from that power the port and river of San Juan, until they were finally captured from Nicaragua, in 1848, and then first became a part of the Mosquito protectorate.

3. *Territory between the Sibun and the Sarstoon.*

The next portion of Central America which demands attention is the territory between the rivers Sibun and Sarstoon. Over this territory the British settlers from Belize have been encroaching for several years; but this, it was believed, without the authority or sanction of the British government. It now appears that Great Britain claims the territory, and declines to withdraw from its occupation, in obedience to the convention.

In regard to it the question need not be discussed, whether the convention embraces the entire isthmus, geographically known as Central America, or is confined to the five States which formerly composed the republic of that name. In either sense, the country between the Sibun and the Sarstoon is included within Central America. This territory is a part of the province of Vera Paz, all of which constitutes an integral portion of the State of Guatemala. At the date of the

treaty of 1786, and until the Spanish dominion terminated, the territory south of the Sibun was included within the ancient kingdom of Guatemala, of which, with the exception of Chiapas, the confederated republic was composed. This, as a geographical fact, it is presumed will not be denied.

The British statement contends that Mr. Clayton's declaration of the 4th July, 1850, not only embraces the settlement of Belize proper, under the treaty with Spain, but covers the territory south of it, between the Sibun and the Sarstoon.

The language employed by Mr. Clayton is, "the British settlement in Honduras." Now, while such a settlement exists under the treaty of 1786, to which this language is precisely applicable, it would be a most strained construction to extend its application beyond the treaty limits, and make it protect the encroachments of British settlers over a larger territory than that included within the settlement itself.

Besides, Mr. Clayton states, in a subsequent part of the same document, that the convention of 1850 "was understood to apply to, and does include, all the Central American States of Guatemala, Honduras, San Salvador, Nicaragua, and Costa Rica, with their just limits and proper dependencies."

Then, under this declaration, itself, the territory in question being within "the just limits" of the State of Guatemala, is expressly embraced by the convention.

Lord Clarendon considers himself "more warranted" in concluding that Mr. Clayton's statement applies to this territory, "from the fact that the United States had, in 1847, sent a consul to this settlement, which consul had received his exequatur from the British government—a circumstance (says his lordship) which constitutes a recognition, by the United States government, of the settlement of British Honduras under her Majesty, as it then existed."

Now, it would be easy to prove that a consul is never sent to a whole settlement, or to an entire nation, but only to a single port, for the purpose of superintending the commerce at that port; and, therefore, that no inference could be drawn from the fact that the United States had sent a consul to the port of Belize, within the treaty limits, in favor of the claim of Great Britain to a country far beyond these limits. But this would not be sufficient for the occasion. Mr. Buchanan emphatically denies the proposition that the appointment of a consul to Belize was any, even the slightest, recognition of the right of Great Britain to this very port.

A consul is an officer appointed to reside in a foreign country for the purpose of facilitating, extending, and protecting the trade of his nation with that country. Such officers follow foreign trade, wherever it may go, and afford protection to it, no matter whether the ports to which they are sent be in the possession of the rightful owner or a usurper. The appointment of a consul recognises nothing more than the *de facto* possession of the port by the power from which his exequatur is received. Such an appointment does not, in the slightest degree, interfere with the question of the right [*de jure*] of this power to be in possession. This has ever been, and this must ever be, the law and practice of modern commercial nations. If it were otherwise,

then, before the appointment of a consul, the government of a nation must first carefully inquire whether the party in possession be the rightful owner of the port; and if they determine against its right, then their commerce with it must either cease altogether or remain without consular protection. This would be a novel doctrine to maintain in the present age of commercial progress.

The law and practice of nations have for a long period been clear on this point; because consuls are mere commercial and not political agents. At the present time, even the appointment of a public minister is wisely considered as a recognition of nothing more than the *de facto* possession of the power to which he is accredited.

The British statement claims the territory between the Sibun and the Sarstoon by right of conquest, and observes "that the treaty of 1786 was put an end to by a subsequent state of war" with Spain, and "that during that war the boundaries of the British settlement in question were enlarged," and that the subsequent treaty of peace not having revived the treaties of 1783 and 1786, Great Britain is entitled to retain this territory.

It may be observed that the statement does not mention at what period the boundaries of the British settlement were enlarged. If this took place, as it is believed it did, after the date of the treaty of alliance between Great Britain and Spain in 1809, which terminated the war, then this argument falls to the ground. If before 1809, Great Britain, when concluding this treaty, ought to have informed Spain that she intended to convert the encroachments of the settlers in Belize on Spanish territory into an absolute right. That she did not then intend to pursue such a course towards an ally in distress, is clear from her subsequent conduct.

In 1814 Great Britain revived all her pre-existing commercial treaties with Spain; and what is the privilege granted to her by the treaty of 1786, of cutting mahogany, logwood, and other dye-woods on Spanish territory, thus enabling her to extend British commerce in these articles, but a commercial privilege?

So far from the treaty of 1786 being "put an end to" by the war, its continued existence in 1817 and 1819 was recognised by acts of the British parliament; these declare, in so many words, that Belize was "not within the territory and dominion of his Majesty," but was "merely a settlement for certain purposes, in the possession and under the protection of his Majesty."

For the nature of this "settlement," and a knowledge of "these certain purposes," we can refer nowhere except to the treaties of 1783 and 1786.

In addition to these acts of parliament, it is proper here to repeat, that, so late as 1826, Great Britain has, by her treaty with Mexico, acknowledged the continued existence and binding force of the treaty of 1786.

But no matter what may be the nature of the British claim to the country between the Sibun and the Sarstoon, the observation already made in reference to the Bay islands and the Mosquito coast must be reiterated; that the great question does not turn upon the validity of this claim previous to the convention of 1850, but upon the facts that

Great Britain has bound herself by this convention not to occupy any part of Central America, nor to exercise dominion over it; and that the territory in question is within Central America, even under the most limited construction of these words. In regard to Belize proper, confined within its legitimate boundaries, under the treaties of 1783 and 1786, and limited to the usufruct specified in these treaties, it is necessary to say but a few words. The government of the United States will not for the present insist upon the withdrawal of Great Britain from this settlement, provided all the other questions between the two governments concerning Central America can be amicably adjusted. It has been influenced to pursue this course partly by the declaration of Mr. Clayton on the 4th of July, 1850, but mainly in consequence of the extension of the license granted by Mexico to Great Britain under the treaty of 1826, which that republic has yet taken no steps to terminate.

It is, however, distinctly to be understood, that the government of the United States acknowledge no claim of Great Britain within Belize, except the temporary "liberty of making use of the wood of the different kinds, the fruits and other produce in their natural state," fully recognising that the former "Spanish sovereignty over the country" now belongs either to Guatemala or Mexico.

In conclusion, the government of the United States most cordially and earnestly unite in the desire expressed by "her Majesty's government, not only to maintain the convention of 1850 intact, but to consolidate and strengthen it by strengthening and consolidating the friendly relations which it was calculated to cement and perpetuate." Under these mutual feelings, it is deeply to be regretted that the two governments entertain opinions so widely different in regard to its true effect and meaning.

JAMES BUCHANAN.

Convention between the United States of America and her Britannic Majesty, for facilitating and protecting the construction of a ship-canal between the Atlantic and Pacific oceans, and for other purposes. Concluded April 19, 1850; ratified by the United States May 23, 1850; exchanged July 4, 1850; and proclaimed by the United States July 5, 1850.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a convention between the United States of America and her Britannic Majesty, for facilitating and protecting the construction of a ship-canal between the Atlantic and Pacific oceans, and for other purposes, was concluded and signed at Washington on the 19th day of April last, which convention is, word for word, as follows:

Convention between the United States of America and her Britannic Majesty.

The United States of America and her Britannic Majesty, being desirous of consolidating the relations of amity which so happily subsist between them, by setting forth and fixing in a convention their views and intentions with reference to any means of communication by ship-canal which may be constructed between the Atlantic and Pacific oceans, by the way of the river San Juan de Nicaragua, and either or both of the lakes of Nicaragua or Managua, to any port or place on the Pacific ocean: the President of the United States has conferred full power on John M. Clayton, Secretary of State of the United States; and her Britannic Majesty on the Right Honorable Sir Henry Lytton Bulwer, a member of her Majesty's most Honorable Privy Council, Knight Commander of the Most Honorable Order of the Bath, and Envoy Extraordinary and Minister Plenipotentiary of her Britannic Majesty to the United States for the aforesaid purpose: and the said plenipotentiaries having exchanged their full powers, which were found to be in proper form, have agreed to the following articles:

ARTICLE I.

The governments of the United States and Great Britain hereby declare, that neither the one nor the other will ever obtain or maintain for itself any exclusive control over the said ship-canal; agreeing that neither will ever erect or maintain any fortifications commanding the same or in the vicinity thereof, or occupy, or fortify, or colonize, or assume or exercise any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America; nor will either make use of any protection which either affords or may afford, or any alliance which either has or may have to or with any State or people, for the purpose of erecting or maintaining any such fortifications, or of occupying, fortifying, or colonizing Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America, or of assuming or exercising dominion over the same; nor will the United States or Great Britain take advantage of any intimacy, or use any alliance, connexion or influence that either may possess with any State or government through whose territory the said canal may pass, for the purpose of acquiring or holding, directly or indirectly, for the citizens or subjects of the one, any rights or advantages in regard to commerce or navigation through the said canal, which shall not be offered on the same terms to the citizens or subjects of the other.

ARTICLE II.

Vessels of the United States or Great Britain traversing the said canal shall, in case of war between the contracting parties, be exempted from blockade, detention, or capture by either of the belligerents; and this provision shall extend to such a distance from the

two ends of the said canal as may hereafter be found expedient to establish.

ARTICLE III.

In order to secure the construction of the said canal, the contracting parties engage, that if any such canal shall be undertaken upon fair and equitable terms by any parties having the authority of the local government or governments through whose territory the same may pass, then the persons employed in making the said canal, and their property used, or to be used, for that object, shall be protected, from the commencement of the said canal to its completion, by the governments of the United States and Great Britain from unjust detention, confiscation, seizure, or any violence whatsoever.

ARTICLE IV.

The contracting parties will use whatever influence they respectively exercise with any State, States, or governments, possessing, or claiming to possess, any jurisdiction or right over the territory which the said canal shall traverse, or which shall be near the waters applicable thereto, in order to induce such States or governments to facilitate the construction of the said canal by every means in their power. And furthermore, the United States and Great Britain agree to use their good offices, wherever or however it may be most expedient, in order to procure the establishment of two free ports, one at each end of the said canal.

ARTICLE V.

The contracting parties further engage, that when the said canal shall have been completed, they will protect it from interruption, seizure, or unjust confiscation, and that they will guaranty the neutrality thereof, so that the said canal may forever be open and free, and the capital invested therein secure. Nevertheless, the governments of the United States and Great Britain, in according their protection to the construction of the said canal, and guarantying its neutrality and security when completed, always understand that this protection and guaranty are granted conditionally, and may be withdrawn by both governments, or either government, if both governments, or either government, should deem that the persons or company undertaking or managing the same, adopt or establish such regulations concerning the traffic thereupon as are contrary to the spirit and intention of this convention, either by making unfair discriminations in favor of the commerce of one of the contracting parties over the commerce of the other, or by imposing oppressive exactions or unreasonable tolls upon passengers, vessels, goods, wares, merchandise, or other articles. Neither party, however, shall withdraw the aforesaid protection and guaranty without first giving six months' notice to the other.

ARTICLE VI.

The contracting parties in this convention engage to invite every State with which both or either have friendly intercourse to enter into stipulations with them similar to those which they have entered into with each other, to the end that all other States may share in the honor and advantage of having contributed to a work of such general interest and importance as the canal herein contemplated. And the contracting parties likewise agree that each shall enter into treaty stipulations with such of the Central American States as they may deem advisable, for the purpose of more effectually carrying out the great design of this convention, namely, that of constructing and maintaining the said canal as a ship communication between the two oceans for the benefit of mankind, on equal terms to all, and of protecting the same ; and they also agree, that the good offices of either shall be employed, when requested by the other, in aiding and assisting the negotiation of such treaty stipulations ; and should any differences arise as to right or property over the territory through which the said canal shall pass between the States or governments of Central America, and such differences should in any way impede or obstruct the execution of the said canal, the governments of the United States and Great Britain will use their good offices to settle such differences in the manner best suited to promote the interests of the said canal, and to strengthen the bonds of friendship and alliance which exist between the contending parties.

ARTICLE VII.

It being desirable that no time should be unnecessarily lost in commencing and constructing the said canal, the governments of the United States and Great Britain determine to give their support and encouragement to such persons or company as may first offer to commence the same, with the necessary capital, the consent of the local authorities, and on such principles as accord with the spirit and intention of this convention ; and if any persons or company should already have, with any State through which the proposed ship-canal may pass, a contract for the construction of such a canal as that specified in this convention, to the stipulations of which contract neither of the contracting parties in this convention have any just cause to object, and the said persons or company shall, moreover, have made preparations, and expended time, money, and trouble, on the faith of such contract, it is hereby agreed that such persons or company shall have a priority of claim, over every other person, persons or company, to the protection of the governments of the United States and Great Britain, and be allowed a year from the date of the exchange of the ratifications of this convention for concluding their arrangements, and presenting evidence of sufficient capital subscribed to accomplish the contemplated undertaking ; it being understood that if, at the expiration of the aforesaid period, such persons or company be not able to commence and carry out the proposed enterprise, then the governments of

the United States and Great Britain shall be free to afford their protection to any other persons or company that shall be prepared to commence and proceed with the construction of the canal in question.

ARTICLE VIII.

The governments of the United States and Great Britain having not only desired, in entering into this convention, to accomplish a particular object, but also to establish a general principle, they hereby agree to extend their protection, by treaty stipulations, to any other practicable communications, whether by canal or railway, across the isthmus which connects North and South America, and especially to the inter-oceanic communications, should the same prove to be practicable, whether by canal or railway, which are now proposed to be established by the way of Tehuantepec or Panama. In granting, however, their joint protection to any such canals or railways as are by this article specified, it is always understood by the United States and Great Britain that the parties constructing or owning the same shall impose no other charges or conditions of traffic thereupon than the aforesaid governments shall approve of as just and equitable; and that the same canals or railways, being open to the citizens and subjects of the United States and Great Britain on equal terms, shall also be open on like terms to the citizens and subjects of every other State which is willing to grant thereto such protection as the United States and Great Britain engage to afford.

ARTICLE IX.

The ratifications of this convention shall be exchanged at Washington within six months from this day, or sooner if possible.

In faith whereof, we, the respective plenipotentiaries, have signed this convention, and have hereunto affixed our seals.

Done at Washington, the nineteenth day of April, anno Domini one thousand eight hundred and fifty.

JOHN M. CLAYTON.

HENRY LYTTON BULWER.

[L. s.]

[L. s.]

And whereas the said convention has been duly ratified on both parts, and the respective ratifications of the same were exchanged at Washington, on the fourth instant, by John M. Clayton, Secretary of State of the United States, and the Right Honorable Sir Henry Lytton Bulwer, envoy extraordinary and minister plenipotentiary of her Britannic Majesty, on the part of their respective governments:

Now, therefore, be it known, that I, ZACHARY TAYLOR, President of the United States of America, have caused the said convention to be made public, to the end that the same, and every clause and article thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

[L. s.] In witness whereof I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington, this fifth day of July, in the year of our Lord one thousand eight hundred and fifty, and of the independence of the United States the seventy-fifth.

Z. TAYLOR.

By the President:

J. M. CLAYTON, *Secretary of State*.

DECLARATION.

In proceeding to the exchange of the ratifications of the convention signed at Washington on the 19th of April, 1850, between her Britannic Majesty and the United States of America, relative to the establishment of a communication by ship-canal between the Atlantic and Pacific oceans, the undersigned, her Britannic Majesty's plenipotentiary, has received her Majesty's instructions to declare that her Majesty does not understand the engagements of that convention to apply to her Majesty's settlement at Honduras, or to its dependencies. Her Majesty's ratification of the said convention is exchanged under the explicit declaration above mentioned.

Done at Washington the 29th day of June, 1850.

H. L. BULWER.

MEMORANDUM.

DEPARTMENT OF STATE,
Washington, July 5, 1850.

The within declaration of Sir H. L. Bulwer was received by me on the 29th day of June, 1850. In reply, I wrote him my note of the 4th of July, acknowledging that I understood British Honduras was not embraced in the treaty of the 19th day of April last; but at the same time carefully declining to affirm or deny the British title in their settlement or its alleged dependencies. After signing my note last night, I delivered it to Sir Henry, and we immediately proceeded, without any further or other action, to exchange the ratifications of said treaty. The consent of the Senate to the declaration was not required, and the treaty was ratified as it stood when it was made.

JOHN M. CLAYTON.

N. B.—The rights of no Central American State have been compromised by the treaty or by any part of the negotiations.

Mr. Clayton to Sir H. L. Bulwer.

DEPARTMENT OF STATE,
Washington, July 4, 1850.

SIR: I have received the declaration you were instructed by your government to make to me respecting Honduras and its dependencies, a copy of which is hereto subjoined.

The language of the first article of the convention concluded on the 19th day of April last, between the United States and Great Britain, describing the country not to be occupied, &c., by either of the parties, was, as you know, twice approved by your government; and it was neither understood by them, nor by either of us, (the negotiators,) to include the British settlement in Honduras, (commonly called British Honduras, as distinct from the State of Honduras,) nor the small islands in the neighborhood of that settlement which may be known as its dependencies. To this settlement and these islands the treaty we negotiated was not intended by either of us to apply. The title to them it is now, and has been my intention throughout the whole negotiation, to leave as the treaty leaves it, without denying, affirming, or in any way meddling with the same, just as it stood previously. The chairman of the Committee on Foreign Relations of the Senate, the Honorable William R. King, informs me that "the Senate perfectly understood that the treaty did not include British Honduras." It was understood to apply to, and does include, all the Central American States of Guatemala, Honduras, San Salvador, Nicaragua, and Costa Rica, with their just limits and proper dependencies. The difficulty that now arises seems to spring from the use, in our convention, of the term "Central America," which we adopted because Viscount Palmerston had assented to it and used it as the proper term, we naturally supposing that, on this account, it would be satisfactory to your government; but if your government now intend to delay the exchange of ratifications until we shall have fixed the precise limits of Central America, we must defer further action until we have further information on both sides, to which, at present, we have no means of resort, and which it is certain we could not obtain before the term fixed for exchanging the ratifications would expire. It is not to be imagined that such is the object of your government, for not only would this course delay, but absolutely defeat the convention.

Of course, no alteration could be made in the convention as it now stands, without referring the same to the Senate; and I do not understand you as having authority to propose any alteration. But on some future occasion, a conventional article, clearly stating what are the limits of Central America, might become advisable.

There is another matter, still more important, which the stipulations of the convention direct that we shall settle, but which you have no instructions now to determine; and I desire you to invite the attention of your government to it—"the distance from the two ends of the canal" within which "vessels of the United States or Great Britain, traversing the said canal, shall, in case of war between the contracting parties, be exempted from blockade, detention, or capture

by either of the belligerents." The subject is one of deep interest, and I shall be happy to receive the views of your government in regard to it, as soon as it may be convenient for them to decide upon it.

I renew to you, sir, the assurances of the distinguished consideration with which I have the honor to be your obedient servant,

JOHN M. CLAYTON.

To the Right Hon. Sir HENRY L. BULWER, &c., &c., &c.

CORRESPONDENCE

IN RELATION TO

CENTRAL AMERICAN AFFAIRS,

AND

THE CLAYTON AND BULWER CONVENTION,

COMMUNICATED

TO THE SENATE BY THE PRESIDENT OF THE UNITED STATES AT THE FIRST
SESSION OF THE THIRTY-FOURTH CONGRESS.

CORRESPONDENCE
IN RELATION TO
CENTRAL AMERICAN AFFAIRS,
AND
THE CONVENTION OF WASHINGTON
OF
APRIL 19, 1850.

To the Senate of the United States :

I transmit a report from the Secretary of State in answer to the resolution of the Senate of the 17th ultimo, requesting transcripts of certain correspondence and other papers touching the republics of Nicaragua and Costa Rica, the Mosquito Indians, and the convention between the United States and Great Britain of April 19, 1850.

FRANKLIN PIERCE.

WASHINGTON, *February* 14, 1856.

DEPARTMENT OF STATE,

Washington, February 14, 1856.

The Secretary of State, to whom was referred the resolution of the Senate of the 17th ultimo, requesting the President, if compatible with the public interest, "to communicate to the Senate copies of any correspondence which took place between Daniel Webster, Secretary of State, and the British minister and the minister from Costa Rica, in respect to a *projet* which was submitted to Nicaragua, Costa Rica, and the Mosquito Indians, and a copy of such *projet* with the instructions given to Mr. Walsh, the special agent deputed by the United States to present that *projet* to the States of Nicaragua and Costa Rica, as also of such other correspondence as may have passed between him and the said Secretary of State on the subject ; as also copies of the correspondence with Mr. Kerr, chargé d'affaires of the United States in Nicaragua, in reference thereto, together with any cor-

respondence with the government of Nicaragua or its minister, in respect to the same *projet*; and also copies of any letters not heretofore communicated, which may have been addressed to this government by the minister of Nicaragua or the minister of Great Britain, in reference to the construction and purport of the convention between the United States and Great Britain, signed April 19, 1850, and proclaimed July 5, 1850, and of the replies made to them, if any, has the honor to lay before the President the papers mentioned in the subjoined list.

Respectfully submitted.

W. L. MARCY.

To the PRESIDENT.

List of papers accompanying the report of the Secretary of State to the President of the 14th February, 1856.

Mr. Clayton to the Supreme Director of Nicaragua, extract, June 17, 1850.

The Minister of Foreign Affairs of Nicaragua to the Secretary of State of the United States, (translation,) extract, September 10, 1850.

Same to the same, (translation,) enclosures, September 28, 1850.

Same to the same, (translation,) enclosures, November 13, 1850.

Mr. Marcoleta to Mr. Webster, (translation,) February 24, 1851.

Same to the same, (translation,) February 26, 1851.

Mr. Molina to Mr. Webster, March 28, 1851.

Mr. Webster to Mr. Molina, March 31, 1851.

Mr. Marcoleta to Mr. Webster, (translation,) enclosures, May 7, 1851.

Mr. Molina to the same, enclosures, May 8, 1851.

Same to the same, May 8, 1851.

Mr. Marcoleta to Mr. Webster, (translation,) enclosure, June 3, 1851.

Mr. Webster to Mr. Kerr, June 6, 1851.

Same to the same, June 6, 1851.

Mr. Webster to Mr. Molina, June 10, 1851.

Mr. Molina to Mr. Webster, enclosure, June 21, 1851.

Mr. Marcoleta to Mr. Webster, (translation,) October 30, 1851.

Mr. Webster to Mr. Marcoleta, November 11, 1851.

Same to Mr. Kerr, November 20, 1851.

Mr. Molina to Mr. Webster, November 20, 1851.

Mr. Webster to Mr. Molina, November 25, 1851.

Mr. Marcoleta to Mr. Webster, (translation,) December 5, 1851.

Same to the same, (translation,) enclosure, March 5, 1852.

Mr. Molina to Mr. Webster, April 6, 1852.

Mr. Webster to Mr. Molina, April 8, 1852.

Mr. Molina to Mr. Webster, April 9, 1852.

Mr. Webster to Mr. Molina, April 15, 1852.

Mr. Molina to Mr. Webster, April 19, 1852.

Mr. Marcoleta to the same, (translation,) enclosure, April 21, 1852.

Mr. Webster to Mr. Walsh, extract, April 29, 1852.

Bases of a convention for the settlement of differences between Nicaragua and Costa Rica, proposed by the United States and Great Britain, April 30, 1852.

Mr. Webster to Mr. Kerr, April 30, 1852.

Mr. Marcoleta to Mr. Webster, (translation,) May 2, 1852.

Mr. Hunter to Mr. Kerr, May 4, 1852.

Same to Mr. Walsh, May 4, 1852.

Mr. Hunter to Mr. Molina, May 5, 1852.

Mr. Molina to Mr. Hunter, May 8, 1852.

Mr. Hunter to Mr. Kerr, May 13, 1852.

Mr. Hunter to Mr. Molina, May 19, 1852.

Mr. Walsh to Mr. Webster, May 28, 1852.

Same to the same, June 11, 1852.

Same to the same, enclosures, June 25, 1852.

Mr. Kerr to Mr. Webster, extracts and enclosures, July 28, 1852.

Same to the same, extracts and enclosures, July 30, 1852.

Mr. Molina to Mr. Hunter, August 6, 1852.

Mr. Webster to Mr. Molina, August 12, 1852.

Mr. Walsh to Mr. Webster, August 15, 1852.

Mr. Kerr to Mr. Webster, extract and enclosures, September 2, 1852.

Mr. Marcoleta to Mr. Conrad, (translation,) October 16, 1852.

Mr. Kerr to Mr. Webster, extract, October 27, 1852.

Mr. Conrad to Mr. Marcoleta, October 28, 1852.

Mr. Marcoleta to Mr. Conrad, (translation,) November 2, 1852.

Mr. Molina to Mr. Everett, November 11, 1852.

Mr. Molina's project, November 17, 1852.

Mr. Walsh to Mr. Everett, extracts, November 19, 1852.

Mr. Kerr to the Secretary of State, extract, January 13, 1853.

Mr. Molina to Mr. Marcy, September 26, 1853.

Mr. Marcy to Mr. Molina, October 14, 1853.

Mr. Marcoleta to Mr. Marcy, (translation,) December 5, 1853.

Same to same, (translation,) December 6, 1853.

Mr. Marcy to Mr. Molina, December 17, 1853.

Same to Mr. Borland, extract, December 30, 1853.

Mr. Marcoleta to Mr. Marcy, (translation,) enclosure, January 1854.

Mr. Marcy to Mr. Marcoleta, February 21, 1854.

Mr. Clayton to the Supreme Director of Nicaragua.

DEPARTMENT OF STATE,

Washington, June 17, 1850.

SIR: I address this note directly to your excellency, because it is probable that before it shall have reached your capital Mr. Squier, the chargé d'affaires of the United States to Guatemala, will have left Central America on his return to the United States.

Immediately after the arrival of Señor Eduardo Carcache, the Nicaraguan chargé d'affaires in this country, I earnestly entreated him

to procure from his own government the most ample instructions to alter the treaty negotiated with your government by Mr. Squier, in such way as to him, upon full view of all the facts, should seem most conducive to the interests and prosperity of Nicaragua. Negotiations affecting the sovereignty of Nicaragua and her highest interests being in progress between the government of the United States and Great Britain, during the past year, have terminated in a treaty now ratified by both parties, of which I send you a copy, to the end that you may see the disposition of the people of the United States and their government in regard not only to Nicaragua but all Central America. This treaty has been acceded to by Great Britain, at the instance of the United States, and we are now, in pursuance of its provisions, making progress in obtaining the accession of all the great maritime states of Europe to the same treaty. It is not doubted that all the States of Central America will co-operate with us most heartily in the great objects we have in view, (and which caused us to enter into these guaranties,) to facilitate and aid by every means the construction of interoceanic communication across the isthmus which divides northern from southern America. Under these guaranties the Central American republics, united in one confederation and union for their common defence and happiness, will, it is ardently hoped, assume a rank among the nations of the earth, realizing the proudest anticipations of those who have made their brilliant destiny a study. The best wishes of this government towards Central America were conveyed to Nicaragua by our chargé d'affaires at Guatemala. Proofs of friendship, more solid than any professions, are conveyed to you in the enclosed treaty. In return for this, we expect the confidence of yours, as well as of every other Central American State. If that confidence be withheld, all our efforts in behalf of your country will be fruitless. It is impossible for us to communicate with a minister at Leon. Experience has proved that my communications to Mr. Squier are addressed to him in vain, so defective are your mails and means of communication with San Juan de Nicaragua. The President has given him leave of absence, at his own request, and in a few days he will return to the United States. Señor Carcache has no instructions except to exchange the ratifications of the treaty negotiated by your government with Mr. Squier, which is so defective as to its duration and its grants of exclusive rights to the United States, not desired by us, that it cannot be ratified precisely as it stands, unless we repudiate the treaty with Great Britain. It is indispensable that the two treaties should in all respects conform with each other, and to this end Señor Carcache, or some other suitable person, should be immediately invested by your government with *full powers to make a new treaty, or change the old one*, as I have described. More than four months have elapsed since Señor Carcache was fully informed of this. He states to me that he has written to you for new and more ample instructions, and that he has received nothing in reply. In consequence of this misfortune, the interests of Nicaragua are endangered at this critical period. If ample powers are not speedily given to some person to negotiate in your behalf, the Senate of the United States, whose ratification is necessary to the treaty

with your government, may even be compelled to drop it. Although I offered to negotiate with Señor Carcache, *with the express understanding that his government should be bound by nothing in our treaty which it should not hereafter approve*, yet he utterly refused to commence any negotiation without instructions.

* * * * *

Accept, sir, the assurances, &c.,

JOHN M. CLAYTON.

To the SUPREME DIRECTOR
Of the State of Nicaragua.

[Extract from Translation.]

The Minister of Foreign Affairs for Nicaragua to the Secretary of State of the United States.

DEPARTMENT OF FOREIGN RELATIONS,
Leon de Nicaragua, September 10, 1850.

SIR: The important despatch received from your excellency, dated the 17th of last June, is another of those documents bearing incontestable evidence of the very noble and fraternal sentiments which animate the respectable government of the United States in its intercourse with the government of this State relative to those sacred rights and vital interests which link the destiny of the latter with the other sections of the continent.

Your excellency is in possession of authentic data showing the ardent desire of this supreme government to establish such intercourse, and the efforts it has made to cultivate the same for the mutual benefit of the two countries; but although it has availed itself of all the means of communication which presented themselves, yet, owing to the obstacles thrown in the way of all regular correspondence by those who have usurped the occupation of the port of San Juan since the first day of January, 1848, this intercourse has not been so frequent or so punctual as the importance of the matters at issue required. Now, however, that your excellency has been pleased to select a safe channel of communication, in addressing the above-mentioned despatch to this cabinet, the Supreme Director, having well considered its contents, has agreed to reply to your excellency in the following terms:

That having experienced the most unbounded satisfaction, and entertaining a profound sense of gratitude for the friendly offices of your excellency's government relative to the great question which has been agitated with England, he begs to tender, from this moment, with all the earnestness of a true American heart, the thanks which are due for the offices aforesaid, and also for the transmission by your excellency of the treaty concluded in Washington on the 19th of last April, and for the progress your excellency's government has made in procuring the assent of all the principal maritime powers of Europe to said treaty. Your excellency has good reason to hope for the co-operation of the Central American States.

The accomplishment of this interesting object will be greatly facilitated by the simultaneous effort now making on the part of the States of Salvador, Honduras, and Nicaragua to establish a national union in Central America, in spite of the opposition offered by Guatemala and Costa Rica to the realization of such a scheme.

With regard to the State of Nicaragua, which is immediately interested in the question pending with England, it wishes to make known from this moment, to the high government of your excellency, that it does not entertain the smallest doubt of the just and benevolent intentions both of said government and of the heroic people of the United States, and that it anticipates from the treaty of the 19th April all those great results which your excellency has been pleased to prognosticate in regard to the future sovereignty and aggrandizement of this country.

To the Most Excellent the SECRETARY OF FOREIGN AFFAIRS

Of the supreme government of the republic of North America.

[Translation.]

The Minister of Foreign Affairs of Nicaragua to the Secretary of State of the United States.

DEPARTMENT OF FOREIGN RELATIONS,

Leon, September 28, 1850.

SIR: I have the honor of transmitting to your excellency copies of the notes which have been addressed to this department by Mr. Frederick Chatfield, her Britannic Majesty's consul general in Central America, under the respective dates of August the 15th and the 2d instant, and of the replies which have been sent to him by this department, on the 16th and 23d of the present month.

From these documents your excellency will perceive, that notwithstanding the treaty of Washington of last April, the 19th, Mr. Chatfield persists in maintaining the integrity of the Mosquito nation, resting his argument upon the recognition which he supposes the government of the United States to have made of her independence, as well as the fact that the aforesaid treaty was concluded with Great Britain, adding, by way of strengthening his argument, that the government of the French republic has already acceded to the same.

Although Nicaragua has not caused the assertion of her rights to be included in the treaty of the 19th of April, she has seen, with very great satisfaction, a vindication of the same therein, as a kind of explanation and recognition of those rights on the part of the contracting parties; and the supreme director, who saw in the consul's notes alluded to above a studied evasion, with a view of continuing to usurp the coast and the northern ports of the State, has, without a moment's hesitation, decided upon forwarding those documents to your excellency, for the purpose of subserving the general interests of your country and of this State.

It affords me pleasure to renew to your excellency my protestations of regard, with which I am your devoted servant,

S. SALINAS.

The Most Excellent the SECRETARY OF STATE FOR FOREIGN AFFAIRS
Of the government of the United States of North America.

[Translation of Translation.]

HER BRITANNIC MAJESTY'S LEGATION AT GUATEMALA,
August 16, 1850.

SIR: Mr. Vice Consul Foster has informed me of the steps which he has deemed it his duty to take in consequence of the losses recently experienced by Messrs. Beschor & Co., of Granada, through acts of public violence, and for the recovery of a debt contracted some time since by the government of Nicaragua with the aforesaid Messrs Beschor & Co., for the use of certain small vessels which had been forcibly taken possession of by armed men.

In replying to Mr. Foster, under the respective dates of the 19th and 20th of July last, the government of Nicaragua has made use of some expressions, in regard to the Mosquito coast and the authorities thereof, which, owing to the desire I entertain, and have constantly manifested, to see the government of Nicaragua free from the embarrassments by which it is surrounded, in consequence of its not understanding or of concealing from itself its true position in regard to the Mosquito question, have induced me to offer a few remarks on the subject.

I do not wish to make any comments upon the uncourteous and ill-tempered expressions which the government of Nicaragua, unthinkingly, perhaps, has used, in speaking of the British government and its agents, in the course of the controversy about the Mosquito question, as I am disposed to attribute a great portion of this irritability and want of courtesy to error and the suggestions of evil counsellors; but I cannot forbear recommending to your government, in the most friendly spirit, the propriety of viewing a question, the final arrangement of which is demanded by the interests of the country, in a manner more worthy of statesmen, and of treating this subject without any reference to those false relations now existing, and those exaggerated offers on the part of persons who are interested in fomenting ill feelings between Nicaragua and Great Britain.

Instead of persisting in the maintenance of fancied rights to the coast of Mosquito, and refusing to listen to reason, Nicaragua would much more consult her interests by coming to a satisfactory arrangement with England upon this question, as it will not be much longer of any avail to resist the settlement of it.

The government of Nicaragua cannot be ignorant of the determination of her Britannic Majesty's government in regard to the Mosquito question, Viscount Palmerston having declared, in the most explicit language, to the chargé d'affaires of Nicaragua at the British

court, in his communication of the 15th of last April, the impossibility of acceding to the pretensions of Nicaragua.

With regard to the treaty of Washington of the 19th of April, upon which I am told your government relies with undue confidence, that treaty recognises distinctly, contrary to the interpretation evidently put upon it by Nicaragua, the existence of the Mosquito coast, setting thus aside all rights to the sovereignty of that country with which Nicaragua imagines herself to be invested.

The true policy for Nicaragua to pursue is to undeceive herself in regard to her pretensions to the Mosquito country, and to be more cautious how she listens to protestations and assurances on the part of pretended friends. Nicaragua would do well to come to an understanding, without delay, with Great Britain, upon whose relations depend not only the commerce and welfare of the State, but the probability of any positive measures being adopted for establishing an interoceanic communication across her territory, since London is the only place where sufficient capital and spirit of enterprise can be found for carrying out a project of such magnitude.

In conclusion, I beg to repeat, what I have frequently before stated, that her Britannic Majesty's government is actuated by the best wishes to serve Nicaragua, and to aid her in acquiring a proper position in the family of independent nations.

I have the honor, &c.,

FREDERICK CHATFIELD.

The MINISTER OF FOREIGN RELATIONS

Of the Supreme Government of Nicaragua.

LEON, September 28, 1850.

Tue copy :

[SEAL.]

S. SALINAS.

[Translation.]

GOVERNMENT HOUSE,

Leon, September 16, 1850.

The manner in which the British vice-consul, Mr. John Foster, addressed himself to this government in the name of Messrs. Beschor & Company, taking the existence of a Mosquito kingdom for granted, called forth the replies of the 19th and 20th of July, to which you refer in your note of the 16th of last month, which I am instructed to answer as follows.

I must assure you that it was never contemplated by my government to say anything offensive to the dignity of that of her Britannic Majesty, and that the language or sentiments to which allusion is made in your note must be understood as applying solely to what concerns the vindication of the rights of Nicaragua; and you must feel assured that, if we could be biased by the ancientness of the relations that have existed between British subjects and the sons of

Nicaragua, by the identity of those principles of civilization which prevail in both countries, by the interest which England has manifested in all that relates to American independence, and the freedom of the commerce of the world, upon which the best hopes of Nicaragua depend; if, I say again, we could be biased by these pre-existing circumstances, Great Britain and this same State would be united in bonds of the most perfect harmony. But you will also permit me to say, that if these pre-existing auspicious relations have been neutralized by circumstances which are driving us to the painful extremes of hostility, it is all owing to an hypothetical expression—a word, and that word is, the *kingdom* of Mosquito.

My government being free from those pernicious influences which you suppose it to be actuated by, and relying upon the justice of the cause of Nicaragua, even though the Washington treaty of the 19th of last April were not in existence, is determined to maintain it, without, however, ceasing to hope that the obstacles which have engendered the present temporary disagreement between Great Britain and Nicaragua will be promptly and happily smoothed away.

This favorable disposition on the part of my government will convince you how much it values the generous sentiments which, you assure me, the government of Great Britain entertains towards Nicaragua.

Be pleased, in the meanwhile, to accept the assurances of respect and esteem with which I am your obedient servant,

S. SALINAS.

Mr. FREDERICK CHATFIELD,

*Her Britannic Majesty's consul in Central America, and
chargé d'affaires near the governments of Guatemala and
Costa Rica.*

LEON, September 28, 1850.

True copy :

[SEAL.]

S. SALINAS.

[Translation of Translation.]

LEGATION OF HER BRITANNIC MAJESTY,
Guatemala, September 2, 1850.

SIR : I have received a communication from Mr. Vice Consul Foster, dated the 12th of last month, with an enclosed copy of a note which you addressed him on the 2d of the same month, in your capacity of minister of foreign relations for the government of Nicaragua, relative to certain custom-house regulations now in force at Greytown, (San Juan.)

It is much to be regretted that the minister of Nicaragua should, in his allusions to the government of her Britannic Majesty, make use of offensive and unmerited language, since it would be more proper for Nicaragua, instead of accusing Great Britain of injustice and usurp-

ation, to consider calmly the arguments and proofs which have been addressed by her Majesty's government to Don Francisco Castillon and Señor Marcoleta, the diplomatic agents of the government of that State in London, in refusing to acknowledge the right of sovereignty over the Mosquito territory which Nicaragua alleges to belong to her.

The government of her Majesty the Queen has already shown that it is fully justified in maintaining the independence of Mosquito; and although it has been asserted by Nicaragua that it is only lately, and since the independence of Nicaragua, that Great Britain has thought of upholding the rights of the Mosquitos, the fact is, that Great Britain has never ceased to maintain the rights of the king of that coast, and to afford him protection, since the reign of Charles II of England, two hundred years ago.

As the minister of Nicaragua quotes the 4th article of the convention concluded between Captain Lock and the government of Nicaragua on the 7th of March, 1848, it is proper to observe that her Majesty's government has called the attention of Mr. Marcoleta to the 3d and 4th articles of said convention, complaining of the violation of the same on the part of Nicaragua. In those articles Nicaragua promises solemnly not to disturb the peaceful inhabitants of the port of San Juan, now called Greytown, and that no custom-house should be established in the neighborhood of that port; and while the government of Nicaragua was proposing to carry into effect a certain negotiation, in conformity with the convention mentioned above, that same government entered into a contract with various companies composed of citizens of the United States, not only binding them to build a custom-house in Greytown, but even offering to make that place a free port, and to divide a certain portion of the lands adjoining among citizens of the United States for purposes of colonization.

These proceedings in regard to Greytown and the Mosquito territory are by no means in accordance with the obligations which the government of Nicaragua has contracted with the government of her Britannic Majesty.

With regard to the accusation which the minister of Nicaragua has brought against the custom-house officers of Greytown, charging them with "scandalous depredations" upon merchants of Nicaragua, I must remind the minister of Nicaragua that, by his own confession, the agent of Mr. Carcache had failed to comply with the regulations of the port in regard to custom-house duties; and I can assure him that it is only those persons who seek to evade the law, that are exposed to the annoyances alluded to by him.

If the government of Nicaragua, consulting the interests of its own commerce and revenue, had listened to my overtures, the object of which was to promote an amicable understanding about the pending questions, no difficulties would now exist. I am well aware that Nicaragua has allowed herself to be carried away by false promises and vain hopes of assistance and support against England, relative to the Mosquito question; but these hopes could no longer have been entertained by persons of sound judgment, after the settling and signing of the treaty of Washington, to which France has acceded. This treaty is an unquestionable authority upon this point, and so far from

favoring the views of Nicaragua, said treaty declares that North America recognises the existence of Mosquito, acknowledging it to be as perfectly distinct a state or country, with respect to Nicaragua, as Costa Rica or any other portion of Central America.

I have thus had the honor of replying to the note which the government of Nicaragua has thought proper to address, through you, to the British vice consul, on the 2d of last August; there only remaining for me to reiterate, in conclusion, the good wishes and friendly feelings by which I am actuated in endeavoring, in the name of her Britannic Majesty's government, to effect an amicable arrangement with the government of Nicaragua, which may be the means of establishing the relations of the two countries upon a solid and satisfactory foundation.

I have the honor, &c.,

FREDERICK CHATFIELD.

DON SEBASTIAN SALINAS,

Minister of Foreign Relations for the Government of Nicaragua.

LEON, September 28, 1850.

True copy :

[L. S.]

SALINAS.

[Translation.]

GOVERNMENT HOUSE,

Leon, September 23, 1850.

Having acquainted the supreme director of this State with the contents of your note of the 2d instant, in which notice is taken of that which I addressed to Mr. Vice Consul Don Juan Foster, on the 2d of last August, relative to certain custom-house regulations now in force in the port of San Juan de Nicaragua, that high functionary has directed me to say to you in reply: That this government, in claiming what is due to the State, and in defending the rights of the same, as it is bound in duty to do, from the territorial usurpations, the injuries, and vexations which have been inflicted, and are still being inflicted upon us by British agents and British subjects, had not, and never can have, any intention of infringing upon those considerations of respect which are due to all governments; and that whatever may be the spirit of the treaty of the 19th of April of the present year, between the United States and England, it cannot have deprived Nicaragua of her unquestionable rights over the territory called Mosquito and the port of San Juan, because the State does not allow the justice of its cause to depend upon that convention, which simply recognises the same and no more, being satisfied with the fundamental principles so frequently asserted in its favor; which principles, in proportion as they received the support and approbation of impartial nations, became obnoxious to her Britannic Majesty's government and its agents, neither of whom would examine them with that calmness of temper which reason requires, and which Nicaragua could.

have wished, out of regard for those friendly relations and good understanding which she is anxious to cultivate and maintain in her intercourse with the cabinet of St. James.

With regard to the negotiations which you say you are disposed to forward, my government shall always be found ready to act with the utmost deference in the matter, whenever the government of her Britannic Majesty shall have recognised the rights of Nicaragua to the Mosquito territory, and that the port of San Juan, which has been occupied since the 1st of January, 1848, shall have been vacated.

I have the honor to renew to you my expressions of regard, and to remain your obedient, humble servant,

S. SALINAS.

MR. FREDERICK CHATFIELD,
*Consul General of her Britannic Majesty
 in Central America, and Chargé d'Affaires
 near the Governments of Guatemala and Costa Rica.*

LEON, September 28, 1850.

True copy :
 [L. s.]

SALINAS.

[Translation.]

*The Minister of Foreign Affairs of Nicaragua to the Secretary of State
 of the United States.*

GOVERNMENT HOUSE,
 Leon, November 13, 1850.

On the 10th of September of the present year, a despatch was addressed to your excellency, by which this government, in reply to your excellency's communication of the 17th of June, states that the intentions of your government in favor of the independence and sovereignty of Nicaragua, declared in its treaty of the 19th of April last, concluded with England, have been set at naught by the latter's insisting on the armed protectorate of the unrecognised Mosquito nation and its fictitious king—seeing that at the date of the aforesaid reply there had already been introduced in the port of San Juan del Norte an armed force, belonging to the service of her Britannic Majesty; and there was continued the usurpation of this, the most precious part of the territory of this State, and the most important to the world for carrying out the great undertaking of the inter-oceanic communication, contracted for on the 27th of August, 1849, with the Atlantic-Pacific Canal Company of the United States.

But if, up to the date above mentioned, any doubt could have been entertained as to the views of the English government, it is now evident that those views are directed towards re-establishing the same order of things which existed previous to the aforesaid treaty—the same Mosquito nation, the same savage king, and the same armed protection of her Britannic Majesty.

The commanding officer of the English squadron in the Antilles has declared, by order of her Britannic Majesty, through a communication dated the 14th of September of this same year, transmitted by the commander of the forces which arrived at the port aforesaid, to the British agent residing at Realejo, and by the latter to the government of Nicaragua, that as a proof that the treaty of the 19th of April allows the armed protectorate of her Britannic Majesty, in favor of the imaginary Mosquito kingdom, to be in existence, he has taken military possession of the port of San Juan de Nicaragua and its vicinity, for the purpose of securing the supposed territorial rights of the pretended king, in regard to the inter-oceanic communication; promising to facilitate the course of the same through the Mosquito territory, as your excellency will see by the same declaration, of which I enclose a full and authorized copy, together with the reply given by this government, an authenticated copy of which is likewise subjoined.

So that the practical interpretation given by the English government to the treaty of the 19th of April, so far from respecting the sovereignty of this country over the port of San Juan del Norte, seeks to convert that very treaty into a title which England has never possessed, in order that the savage tribe of Mosquitos may be considered as a monarchical nation, and as having rights over the northern coast and the port of San Juan Nicaragua; maintaining the usurpation of these territories by new outrages, by means of force and violence, like those which she committed previous to the aforesaid treaty.

In the contract for the inter-oceanic communication entered into by this government with the aforesaid company of the United States, the port of San Juan, or any other point on the northern coast, were expressly calculated upon as the property and possessions of Nicaragua; this contract was recognised by Great Britain in the treaty of the 19th of April, article 7th, and the State shall never betray the rights and interests of the continent by recognising a savage tribe as a sovereign people, with a king and foreign relations.

Nor will the United States recognise this Mosquito nation, nor the intervention of foreign powers in the international affairs of this continent. The solemn declarations of that high government, its conduct in similar cases, and the course pursued by its minister plenipotentiary the M. E. George Squier, disavow the pretended sovereignty of savage tribes, as irreconcilable with territorial integrity, with the paramount dominion and with the independence of every nation which has, at any point of its territory, these small quantities of savages.

This absurdity of forming savage states within the territory of civilized states is rendered much more offensive, unjust, and self-evident, when it is sought to do so by force, and when the great treaty which secures the rights of Nicaragua, and even the whole of Central America, against the usurpations of the English government, is held for nothing, and is even considered as a good excuse for pursuing the same system of barbarous exactions.

As all the arrangements of this State with the worthy government of the United States must rest upon the basis of the sovereignty of Nicaragua and the integrity of her territory, intended for the enterprise of

the inter-oceanic communication, by the contract alluded to, this government has authorized Sr. D. José de Marcoleta, in order that, in his capacity of minister plenipotentiary of Nicaragua near the United States, he may conclude such treaties as may tend to the safety and prosperity of the two countries, as I informed your excellency under date of the 3d of the same month of October.

But as it might happen that Mr. Marcoleta might be prevented by circumstances from pursuing his journey to that capital, while the English government, instead of restoring the port of San Juan and the Mosquito coast to this State, has lately increased the force with which it took military possession of said port and its vicinity, so much so that an English company has concluded with the agent of Costa Rica, Sr. Felipe Molina, a contract of inter-oceanic communication, by the port and river of San Juan de Nicaragua, the government of this State has determined to address the present despatch to your excellency in order that, in view of the facts and documents to which it refers, the government of that respected republic may determine what is proper, in regard to what concerns the interests of the nation which it so happily rules, according to the interpretation which the contracting parties have given to the treaty of the 19th of April; seeing that, at all events, Nicaragua maintains and sustains her rights to the coast called Mosquito, to the port of San Juan and its vicinity, and is ready to enter into arrangements of harmony and good understanding, not only with the government of the American nation, but also with all the governments of the other nations of Europe, and even with England herself, the integrity of her territory being first recognised; I having the satisfaction to intimate to your excellency that such arrangements shall be based on principles of philanthropy and common advantage to the commercial world.

I have the honor to renew to your excellency my sentiments of regard and respect, and to subscribe myself your excellency's obedient and humble servant,

SEBASTIAN SALINAS.

The MINISTER OF FOREIGN RELATIONS

Of the Supreme Government of North America.

[Translation.]

BRITISH VICE CONSULATE,
Realejo, October 12, 1850.

SIR: I have the honor to inform you that I have received a note from Captain Robert Smart, of her Britannic Majesty's ship "Indefatigable," and formerly in command of the protective force, dated Greytown, the 14th of September last, to which point he has been sent by the commanding officer of her Majesty's naval forces in Jamaica.

The orders of Captain Smart were that the tenor of his instructions might be communicated to the government of Nicaragua.

"The treaty lately concluded at Washington between Great Britain and the United States, for the construction of a maritime canal between the Atlantic and Pacific oceans, having been perversely interpreted by a certain party as a surrender of the protection hitherto afforded by the former to the Mosquito nation, her Majesty's government has deemed it proper to station said force at Greytown and its vicinity, for the purpose of proving that such surrender was never intended; and whilst it adopts this measure for the purpose of securing the rights of the Mosquito king, every facility will be afforded to the parties pledged to carry into effect the canal in its transit through the territory of the latter, in conformity with the tenor of said treaty. Captain Smart, in communicating this to the government of Nicaragua, invites it to come forward in a spirit of conciliation, in order to settle all existing difficulties, and to avoid any infraction of treaties actually in force."

Such, sir, is the substance of Captain Smart's note; and being so well convinced as I am of the many advantages which would accrue to both Nicaragua and Mosquito by a removal of all irritating causes, which only tend to increase their disagreements and retard that prosperity which is now dawning upon them, I may be allowed to allude here to the closing paragraph in Mr. Chatfield's letter of September 2, addressed to you, sir, in which he points out the means by which an honorable settlement of all existing difficulties can be reached, and in furtherance of which purpose every assistance will be given by your very obedient servant,

JOHN FOSTER,
Vice Consul.

To the PRINCIPAL SECRETARY
Of the Government of Nicaragua.

LEON, *November 12, 1850.*

True copy :
[L. S.]

SALINAS.

[Translation.]

GOVERNMENT HOUSE,
Leon, October 22, 1850.

This department has received your note, dated the 12th instant, enclosing the instructions which the commander of her Britannic Majesty's naval forces at Jamaica has addressed to Mr. Smart, captain of her Britannic Majesty's ship-of-war "Indefatigable," and formerly in command of the protective force stationed at the port of San Juan de Nicaragua, which you call Greytown, declaring that some parties having given a perverse interpretation to the treaty concluded at Washington on the 19th of April last between the United States and England, construing the same as a surrender of the protectorate which her Britannic Majesty's government has a right to exercise, for a long time past, over the so-called Mosquito nation, he has determined to make use of said protectorate by taking military possession of the port afore-

said and its vicinity, in order to secure the rights of the supposed Mosquito king, promising, at the same time, to afford every facility to the parties pledged to carry into effect the inter-oceanic canal undertaking, in its course through the Mosquito territory, in conformity with said treaty, and inviting the government of this State to settle all existing difficulties and to avoid any infraction of the aforesaid treaty.

The government of the undersigned will forbear from entering into any lengthy discussion as to whether the captain of a ship-of-war is the proper channel for official communications of this kind, inasmuch as the rules of international law, in the management of diplomatic relations, are well known; and confining itself strictly to the contents of your note, it has directed the following reply: That this State has never recognised the existence of a monarchy and of a king on the northern coast of its territory; that, on the contrary, it has always maintained that the Atlantic coast inhabited by those Nicaraguan savages, called Mosquitos, is an integral part of the ancient province of Nicaragua, now a State bearing the same name; and that, consequently, it would only be upon this basis that this government could stipulate or accept treaties of friendship, commerce, and navigation, which the government of her Britannic Majesty desires to have with it; that the aforesaid convention of Washington prohibits, definitely, her Britannic Majesty's government from all occupation of any point on the Mosquito coast, or of any other in Central America; that the act of stationing British forces in the port of San Juan de Nicaragua, and its vicinity, is a new aggression against the territorial rights of this State, and a manifest violation of the aforesaid treaty of Washington, against the infraction of which this government solemnly protests; and that, in view of the military occupation of the port aforesaid and its vicinities, the government of the undersigned will use such further means as international law admits in order to maintain its independence and sovereignty.

I have the pleasure of renewing to you my sentiments of regard, and to subscribe myself, as ever, your obedient and faithful servant,

SEBASTIAN SALINAS.

DON JUAN FOSTER,

Vice Consul of H. B. Majesty at the port of Realejo.

LEON, November 13, 1850.

True copy :
[L. s.]

SALINAS.

[Translation.]

Mr. Marcoleta to Mr. Webster.

WASHINGTON, February 24, 1851.

The undersigned, envoy extraordinary and minister plenipotentiary of the republic of Nicaragua, has the honor of addressing himself to Mr. Daniel Webster, Secretary of State of the United States, for the purpose of submitting to him a few remarks relative to the construc-

tion which Great Britain has thought proper to put upon the treaty concluded between that power and the United States of the north, on the 19th of April, 1850.

It is publicly known that the object of the aforesaid treaty was to secure the most perfect liberty in the construction of the maritime canal through the isthmus of Nicaragua, and to guaranty the neutrality of that important route of inter-oceanic communication. There can be no doubt that, in order to attain these ends, and with a view of avoiding all kind of difficulties in the faithful and honest performance of the stipulations of the treaty, the two powers have thought it proper to cause to be inserted the names of all the states, districts, and localities adjoining, or through which the aforesaid canal had to pass, and among them the Mosquito coast and country, which form and constitute, as they have always formed and constituted, an essential and integral part of the republic of Nicaragua.

The result of this has been that Great Britain, being determined to construe to her own advantage the very letter and provisions of the treaty, addressed new instructions and communications to all her agents in Central America, especially to those residing in Nicaragua, announcing to them, in explanation of the text of the treaty, that the government of the American Union had recognised the existence of the pretended king of Mosquito, and, consequently, the usurpation of the port of San Juan; and that the treaty of the 19th of April, 1850, so far from weakening the rights of the savage chief, confirms and strengthens them.

The undersigned, although fully satisfied as to the sentiments which animate the government of the Union, and the error into which the British government has fallen, cannot avoid addressing himself to Mr. Daniel Webster, Secretary of State, for the purpose of ascertaining whether the government of the United States really intends to recognise, in virtue of said treaty, the existence of a separate sovereign territory, independent of the republic of Nicaragua, commonly known by the designation of Mosquito coast and Mosquito country; and whether the present administration, which so wisely and so prudently rules the destinies of the republic, concurs in the opinions and avows the principles laid down in the despatch which Mr. Clayton addressed to the chargé d'affaires of the republic, in Nicaragua, under date of May 7, 1850.

The undersigned begs that the Secretary of State will be pleased to give an answer to the questions contained in this despatch as soon as possible, and to receive the assurances of his highest and most distinguished consideration.

J. DE MARCOLETA.

Hon. DANIEL WEBSTER,

Secretary of State of the United States.

[Translation.]

*Mr. Marcoleta to Mr. Webster.*WASHINGTON, *February 26, 1851.*

MR. SECRETARY: Under date of the 13th October, 1850, the undersigned addressed a communication to Mr. Abbott Lawrence, United States minister in London, and one subsequently, dated the 18th of last January, to Mr. Rives, who exercises the same functions near the government of the French republic, both of which notes contained the following declaration:

“SEÑOR MINISTER: The legation of Nicaragua has learned, from a reliable source, that the government of her Britannic Majesty has proposed to the government of the United States of America, as a means of settling the question of San Juan, the cession of that port to the State of Costa Rica. The tendency of this proposition being to deprive Nicaragua of her rights over this portion of her territory—rights which the forcible occupation of that port could not have destroyed; and, as this arrangement is moreover in opposition, not only to the interests of Nicaragua, but also to those of the American company for the construction of the Atlantic-Pacific canal, and this being a new occupation disguised under different forms, the undersigned declares, in the most peremptory, solemn, and positive manner, that his government, so far from being able or intending to accept this basis as the means of settlement, only sees in it a fresh act of injustice—a source of new difficulties and further complications.

“The government of Nicaragua cannot, under any circumstances, consent to this new spoliation, equally at variance with all principles of equity and justice: it were to renounce, on the contrary, all those rights which have appertained to her from time immemorial—rights which she has never ceased to maintain from January 1, 1848, the epoch when the British naval forces took possession of San Juan, in the name of the pretended Mosquito king.

“The undersigned, therefore, begs that the American minister will be pleased to make the foregoing declaration known; and, in the mean time, he avails himself of this opportunity to tender him the assurances of his most distinguished consideration.”

As the undersigned is in possession of positive data, showing that the British government insists upon the arrangement alluded to, in furtherance of which it has prevailed upon the government of Costa Rica to set up false pretensions to the port of San Juan, I cannot do less than to repeat now the declaration which I made on the proper occasion to the representatives of the American government, both in London and in Paris.

The undersigned avails himself of this opportunity to tender to the Secretary of State the assurances of his most distinguished consideration.

J. DE MARCOLETA.

HON. DANIEL WEBSTER,
Secretary of State, &c., &c.

Mr. Molina to Mr. Webster.

LEGATION OF COSTA RICA,
Washington, March 28, 1851.

SIR: I have been specially instructed to represent, through your honorable medium, to the government of the United States of America, that the republic of Costa Rica is very anxious to see the philanthropic views of this government in regard to Central America carried out, as contemplated by the ship-canal convention entered into with Great Britain.

According to the provisions of that convention, both contracting powers, the United States and Great Britain, agree to offer their good offices for the settlement of any differences existing between the States of Central America in regard to the territories over which the projected route shall traverse, with a view to remove the political difficulties embarrassing the execution of that great enterprise, and in the interest of humanity.

The government of the United States is probably aware that the republic of Costa Rica claims a right of dominion over all the country lying on the southern bank of the river San Juan, from the Atlantic ocean to the Lake of Nicaragua, as well as on that portion of the aforesaid lake comprised between Fort San Carlos and river La Flor, together with the right to the joint navigation of the above-mentioned river San Juan and of Lake Nicaragua. Costa Rica consequently maintains that her concurrence and participation is necessary in order to open any inter-oceanic communication across the described localities. The State of Nicaragua refuses to recognise the validity of those claims, and pretends to exercise an exclusive control over all matters concerning said territories and said river and lake.

These differences have been for the last few years the subject of frequent discussions and misunderstandings between the governments of Nicaragua and Costa Rica, giving rise to an unnatural state of feeling between communities owing their existence to the same source, and connected by the ties of an equal religion and identical language, customs, and laws.

For its part, the government of Costa Rica, after having exhausted the means of arriving at a peaceful arrangement of such questions by a direct understanding with the neighboring State, as a sense of fraternity and good policy would recommend, has come to the conviction that the only way left for a settlement is to submit the whole affair to the arbitration of disinterested parties.

It is under this impression that Costa Rica accepted a long time ago the high mediation of the United States and Great Britain, and that she appeals now to the justice and good will of this government, trusting that it will, as the tutelar power of this continent, dispense to her the same considerations that Nicaragua has obtained, and not afford to the latter country, by treaty or otherwise, any countenance or support injurious to Costa Rica.

We are likewise led to hope that, pending the settlement of the conflicting claims, the government of the United States will be pleased

to use its influence with the government of Nicaragua in order to prevent a collision, which would only be attended with waste of life and property, and not with any final result.

The character of the present administration of the American Union, so highly distinguished for its wisdom and equity, is regarded by my government as a pledge that the reasonable demands of Costa Rica forming the subject of this communication shall be favorably listened to.

I think it, therefore, my duty to assure you beforehand that the names of the illustrious persons composing now the administration of this nation will forever occupy a prominent place in the grateful hearts of the Costa Rican people as the benefactors of that country.

With the renewed assurance of my high consideration and deep respect, I have the honor to remain, sir, your most obedient servant,
F. MOLINA.

Hon. DANIEL WEBSTER,
Secretary of State of the Government of the United States.

Mr. Webster to Mr. Molina.

DEPARTMENT OF STATE,
Washington, March 31, 1851.

SIR: I have the honor to acknowledge the receipt of your note of the 28th instant, expressing the anxiety of your government to see the philanthropic views of the government of the United States in regard to Central America carried out as contemplated by the ship-canal convention entered into with Great Britain.

In reply, I have the honor to acquaint you that this anxiety is reciprocated by the President of the United States, who has determined to adopt, at once, all proper measures towards accomplishing the object. A distinguished citizen of this country, the honorable J. B. Kerr, late a member of the Congress of the United States, has been appointed and commissioned by the government of the United States as chargé d'affaires to that of Nicaragua. He will proceed on his mission about the 1st of May. Although accredited to the government of Nicaragua only, he will be directed by this department to visit the other governments of Central America, so far as may be in his power, to inquire into the causes of the controversies existing between them, and to urge upon all those governments the propriety of coming to terms of peace and amity between themselves. How desirable it is that those States should be united under one government! The President cannot willingly give up the hope that this will again be accomplished, and Mr. Kerr will be directed to express this sentiment respectfully to them all, and to suggest to their consideration how little the probability is that Central America, now a point so interesting to all nations, can ever attain her proper dignity and proper destiny while divided into so many small States. But if this should be found hopeless, he will still be directed to urge upon

all those governments, in the most friendly manner, the necessity of an immediate cessation of hostilities. The interfering claims of the respective governments of Central America can hardly be expected to be justly settled by the sword, and war among such states must be equally ruinous to the conquerors and the conquered.

Mr. Molina will understand that these sentiments are here advanced from no motive but a sincere regard for the interests of that country. In all that exists in Central America, and in all that may occur hereafter, the United States pursue no private or selfish end whatever. They will not withhold their good offices or their acts of kindness from any of those States. They wish them all to become prosperous and happy. Their desire for this warrants the government of the United States not to use any terms of control or dictation, but to signify its good will, and to offer its advice with all proper earnestness.

The position of Central America on this continent, at the present moment, excites an extraordinary interest in the civilized world. The lines of communication which are to connect the Atlantic and Pacific seas must, several of them, run through that country. In establishing these communications, all civilized commercial states have a direct interest; and it may be taken for granted that this communication will be made, and therefore those governments cannot be too early nor too vigorous in their efforts to establish peace and harmony, if indeed they cannot establish political union among themselves, to the end that the rights of all may be protected, and the whole country go forward in the progress of improvement.

I avail myself of this occasion, sir, to offer to you the assurance of my very distinguished consideration.

DANIEL WEBSTER.

Señor Don FELIPE MOLINA, &c., &c., &c.

[Translation.]

Mr. Marcoleta to Mr. Webster.

WASHINGTON, May 7, 1851.

The undersigned, envoy extraordinary and minister plenipotentiary of the republic of Nicaragua near the government of the United States, has the honor of enclosing to the Hon. Daniel Webster, Secretary of State, copies of two communications which have been transmitted to the government of Nicaragua—one by Mr. John Foster, British vice consul at Realejo, and the other by Mr. Frederick Chatfield, consul general and chargé d'affaires of England in Central America.

The character, contents, and date of these documents, have induced the government of Nicaragua to believe, and to feel convinced even, that Great Britain, notwithstanding the stipulations entered into, and the compromises solemnly agreed upon with the American government, on the 19th of April, 1850, designs to evade the exact ful-

filment of the same, by giving a perverse and even a false interpretation to the letter and spirit of the provisions contained therein.

It has appeared to the government of Nicaragua that compromises of this nature, the object of which is to assist in carrying out an undertaking of great magnitude, and of immense utility to the commercial world, ought to have been faithfully complied with, and fully carried into effect, immediately after the exchange of ratifications between the contracting parties.

Unfortunately, experience has shown the contrary; and proofs are accumulating daily to the effect that the only object which Great Britain has proposed to herself is to evade the compromises aforesaid, and to prolong a state of things which is fatal to the entire commerce of the world, contrary to justice and to equity, offensive to the dignity and independence of Nicaragua, and injurious to her interests and to the fostering and development of her natural resources.

If to these considerations we add the insults and vexations which are daily inflicted by British officers and British agents, who, owing to the want of capacity on the part of the protected Mosquitos, exercise authority in the name of that savage tribe, against the honor, the dignity, and the respect due to the government and the citizens of the republic, it should not be wondered at if the government and the people of Nicaragua, exasperated beyond endurance, were to overstep the boundaries of that moderation and forbearance which, until this day, have been the rule and the guide of their conduct.

Nicaragua is well aware that, under any other circumstances, her interference in the affairs of two great foreign powers might be liable to censure, as ill-advised and unreasonable; but in the present case, when the subjects under consideration affect, in so direct a manner, her interests, the integrity of her territory, and her political existence, she thinks it her duty to be vigilant, and to protest, as she does protest through the medium of her representative, against those acts which bear ostensible evidence of a flagrant violation of solemn contracts and sacred compromises, which are so intimately connected with her political, territorial, and mercantile interests.

The undersigned hopes, therefore, that the government of the United States, duly appreciating the contents of this despatch and those of the accompanying documents, will hasten to adopt some measures worthy of the noble principles which constitute the foundation of American policy, and in harmony with the good and friendly relations and the interest which the government and people of the United States have manifested, and still continue to manifest daily, towards their sister republic of Nicaragua, to which they are bound by so many intimate ties, that are happily being drawn closer and closer between them.

The undersigned avails himself of this opportunity to renew to the honorable Mr. Webster, Secretary of State, the assurances of his most distinguished consideration.

J. DE MARCOLETA.

Hon. DANIEL WEBSTER.

[Translation.]

BRITISH VICE-CONSULATE,
Realejo, October 12, 1850.

SIR: I have the honor to inform you that I have received from Mr. Robert Smart, captain of her Britannic Majesty's ship "Indefatigable," and an old officer of the protective forces, a note, dated the 14th of September last, from Greytown, to which point he has been sent by the commanding officer of her Majesty's naval forces at Jamaica.

Captain Smart was ordered to communicate to the government of Nicaragua the tenor of his instructions.

"The treaty which has lately been concluded at Washington between Great Britain and the United States, for the construction of a maritime canal to connect the Atlantic and Pacific oceans, having been perversely interpreted by certain parties as a withdrawal of the protection which the first-mentioned power has hitherto granted to the Mosquito nation, her Majesty's government has thought proper to locate the forces aforesaid in Greytown and its vicinities, for the purpose of showing that it was never intended to make any such concession; and while this measure is taken to secure the rights of the Mosquito king, every facility will be given to the parties engaged in the construction of the canal across his territory, agreeably to the provisions of said treaty. In making this communication to the government of Nicaragua, Captain Smart invites the latter to meet him in a spirit of conciliation, in order to settle all existing difficulties, and to avoid all possible violation of treaties actually in force."

Such, sir, is the substance of Captain Smart's note; and being fully convinced, as I am in fact, that great advantages will accrue to Nicaragua and to Mosquito by the removal of all causes of irritation, which only tend to increase the number of disagreements between them, and to retard that prosperity which is at present dawning upon them, I shall be excused for referring, in this place, to the last paragraph in Mr. Chatfield's note of the 2d of September, addressed to you, sir, in which he points out "the means by which all existing difficulties can be honorably settled;" towards which object every assistance will be given by your most obedient servant,

JOHN FOSTER, *Vice Consul.*

The PRINCIPAL SECRETARY

Of the Government of Nicaragua.

True copy:

J. DE MARCOLETA.

[Translation.]

LEGATION OF HER BRITANNIC MAJESTY,
Guatemala, December 5, 1850.

The government of Nicaragua having systematically slighted the frequent propositions which have been made to the republic of Nica-

ragua, in the name of her Majesty the Queen of Great Britain and Ireland, as representing the king of Mosquito, with a view of determining, by means of some formal arrangement, the boundaries between the dominions of the aforesaid king of Mosquito and the territory of the republic of Nicaragua, her Britannic Majesty has come to the conclusion that the interest and comfort of both parties require that this point should not any longer remain unsettled; and, as a proof of the conciliatory spirit which actuates her Britannic Majesty on this subject, it has been resolved to declare that the boundaries of the territory of Mosquito, on that side which is contiguous to Nicaragua, will be considered the same as those which were designated for that kingdom on the 15th of September, 1821, when Nicaragua, as a portion of the ancient kingdom of Guatemala, made herself independent of the Spanish monarchy. This basis being established, the respective localities of the two countries are determined according to the civil and ecclesiastical regulations which have been in force in Nicaragua—supposing that the towns and villages which are situated on the Mosquito frontier, with municipal and parochial authorities, remain as they have been until now—forming a part and being under the jurisdiction of the government and authorities of Nicaragua. The existing incorrectness of geographical data, in regard to the interior of Central America, does not allow, for the present, the possibility of determining the latitude and longitude of places appertaining to Nicaragua, at a distance from her eastern and northeastern frontier; but circumstances require that the general line of the boundaries which her Majesty's government is disposed to maintain as Mosquito territory should be designated—the government of Nicaragua having refused to enter into a friendly discussion, and to appoint commissioners to that effect for settling the boundary line between the two territories. With this view the undersigned, chargé d'affaires of her Britannic Majesty in Central America, has the honor of informing the minister of the supreme government of Nicaragua, that the general boundary line of the dominions of Mosquito runs from the northern extremity of the line which separates the district of Tegucigalpa, in Honduras, from the jurisdiction of New Segovia, in Nicaragua; and following close upon the northern frontier of New Segovia, runs off from the southeastern boundary of the district of Matagalpa and Choutales, and from thence, in an eastern direction, as far as the borders of Machuca, in the river San Juan. In order to avoid all possible mistake or misunderstanding in regard to the villages which have belonged to Nicaragua from the period previous to her independence in 1821, there has been annexed to this note a list of the parish districts and their dependencies in the diocese of Nicaragua, which, with their respective demesnes and private estates, with their due titles, that are found situated on the eastern and northeastern frontier of Nicaragua, it is understood, are considered as without the limits of Mosquito on the frontier of Nicaragua. In conclusion, the undersigned, in stating that the line referred to above is that which is considered as constituting the boundary between the two countries, begs to repeat that her Britannic Majesty is determined to maintain the same in the name of the king of Mosquito, without relinquishing, on this account, the dis-

position to negotiate and to enter into a friendly agreement with the government of Nicaragua, upon a firm basis, for the final settlement of these questions. The undersigned hopes that the government of Nicaragua will perceive the expediency of coming to a friendly understanding with the government of Mosquito; because it is obvious that neither the canal nor any other means of communication through the isthmus can be fully established until the difficulties which have been started by Nicaragua, upon this point, are settled and put at rest.

The undersigned avails himself of this occasion, &c.

FREDERICK CHATFIELD.

The MINISTER OF RELATIONS

Of the Supreme Government of Nicaragua, Leon.

LEON, January 4, 1851.

True copy—there is a signature :

SALINAS.

Extract from the table of parish districts in the bishopric of Nicaragua, jurisdiction of New Segovia.

Segovia, its dependencies; Mozonte and the Ocotal; the town of St. Antonio de Esteli; the Xicaro; S. A. Jalapa; Tepezomoto; S. A. Pueblo Nuevo; Iotogalpa and Haquina.

District of Matagalpa.

Matagalpa; S. A. Sebaco; Muimui; San Ramon Xinotega Jeustepet; S. A. Baco Camuapa y Comalapa; Palacaguina; S. A. Condega y Tespanega; Acoyapa.

True copy :

J. DE MARCOLETA.

Mr. Molina to Mr. Webster.

WASHINGTON, May 8, 1851.

The undersigned, minister plenipotentiary of Costa Rica, has the honor to transmit herewith, to the Hon. Mr. Webster, Secretary of State of the United States, a copy of a "memoir" on the boundary question pending between the republic of Costa Rica and the State of Nicaragua, which he has considered his duty to publish, as representative of that republic.

He begs, likewise, to hand the three accompanying manuscript copies, viz :

(A.)—Copy of the charter granted by the king of Spain, in 1540, to Diego Gutierrez, for the purpose of settling the province of Cartago, (Costa Rica,) and conferring upon him the title of governor. Extracts of other records, referring to the commencement of that colony, are annexed thereto.

(B.)—Copy of the charter granted by the king of Spain, in 1574, to Diego de Artieda, appointing him governor and captain-general of Costa Rica.

(C.)—Copy of a report sent to the court of Spain, in 1719, by Don Diego de la Haya, the then governor of Costa Rica, describing at length the condition in which the province was at that period.

The portions of those documents that have not been transcribed in the accompanying copies were only such as appeared quite irrelevant to the subject in question.

It is in compliance with the instructions of his government that the undersigned hastens now to lay before the honorable Secretary of State the aforesaid memoir and ancient records for the information of the American government. He ventures to think that these papers afford the strongest evidence of the justice of Costa Rica in her claim to the territories and rights in dispute, as well as of the moderation that has always guided her counsels; and he flatters himself that their perusal will suffice to secure, in behalf of the country he represents, the kind interest and good opinions of the cabinet at Washington, which Costa Rica values in the highest degree, and is so anxious to deserve.

Although, as set forth in the report above mentioned, Costa Rica believes she has a clear title to repute as belonging to her dominion the southern portion of the harbor of San Juan, now occupied under the authority of the Mosquito king with the assistance of Great Britain, she has abstained heretofore from bringing forward such a claim, out of regard for the friendly relations existing between herself and Great Britain, and in the hope of being enabled, at some future day, to effect through negotiation a satisfactory arrangement. It will be perceived, moreover, that the circumstances in which Costa Rica has been placed rendered this line of policy the only one open to her.

However, in the event of any change taking place in respect to the aforesaid port of San Juan, the republic of Costa Rica will think herself called upon to sustain her claim to it, which is equally as good as that of Nicaragua; and she feels confident that her rights will be taken into consideration, and that the government of the United States will exercise its influence to have those rights duly recognised by Nicaragua, not only in reference to that locality, but likewise in reference to the whole frontier maintained by the republic.

It is hardly necessary to add, that having accepted, a long time since, the proffered mediation of the United States and Great Britain for the settlement of the questions alluded to, Costa Rica will gladly and thankfully listen to any suggestions that both powers may think proper to make on the subject, trusting that some means may be devised to facilitate the earliest and most satisfactory termination of these questions, as the interest of all the parties concerned does require.

The undersigned profits of this opportunity to renew to the honorable Secretary of State the assurances of his high consideration and deep respect, as his most obedient, humble servant,

F. MOLINA.

Hon. DANIEL WEBSTER,
Secretary of State.

A.

[Translation.]

Charter granted to Diego Gutierrez, and other records respecting the ancient province of Costa Rica.—1540.

I, Don Aniceto de la Higuera, of the illustrious college of advocates, and of the economical association of the friends of the country of Seville, secretary of her Majesty, and honorary auditor of war and marine, and keeper of the archives of the Indian bureau in said city,

Certify: That there having been addressed to me by the most excellent Count of San Luis, secretary of state and of the department of government of the kingdom, the royal order made at Madrid on the twenty-seventh of May, one thousand eight hundred and fifty, which, copied word for word, says as follows:

“BUREAU OF FOREIGN AFFAIRS,
“*Madrid, May 27, 1850.*

“Her Majesty the Queen has thought proper to grant permission to Don Felipe Molina, minister plenipotentiary of Costa Rica at this court, either in person or through the medium of some one empowered by him, to assist in ascertaining from the archives of that office the boundaries of said republic, comprising the ancient province of the same name, and the district of Nicoya, where the captaincy-general of Guatemala formerly existed, ordering, that as occasion requires, there be freely delivered to said plenipotentiary copies of such documents as are not reserved, which may tend to establish the boundary lines referred to. I inform you of this by royal order for the purposes to which it applies, and as additional to that of the nineteenth of the present month. God preserve you many years.

“SAN LUIS,
“*The Archive-keeper General of the Indies, Seville.*”

Señor Don José Maria Gutierrez, honorary secretary of her Majesty, and agent of Señor Don Felipe Molina, minister plenipotentiary of Costa Rica, having presented himself before me at the same time, I exhibited to him the bundle of papers preserved among these archives, inscribed “Secretary of Peru, registries of Veragua, official and private; one volume, from the year one thousand five hundred and thirty-four, to the year one thousand six hundred and twenty-eight,” which is bound, and contains two hundred and six written leaves, whereamong are to be found several royal orders and separate paragraphs which have been pointed out by said agent for the purpose of making this certificate, and which, copied word for word, one after the other, are as follows:

* * * * *

On the first folio there is contained a description of the province of Veragua, after its having been conquered and settled by Captain

Felipe Gutierrez, and it states that it includes all the territory within the boundary lines, commencing at the government of Castilla del Oro, called "Tierra Firme," and which were run out by Pedrarias Davila and by Pedro de los Rios, governors at that time of said province, under the directions which were given to them, as far as the Cape of "Gracias á Dios."

On both sides of the thirty-eighth leaf is to be found the authorization of the conquest of the province of Cartago, accorded to Diego Gutierrez, and dated at Madrid on the twenty-ninth of November, one thousand five hundred and forty, and therein there is a paragraph which, copied word for word, is as follows:

"Firstly, we give license and authority that through us and our name, and that of the royal crown of Castile, you may make conquest of and colonize the lands which belong to us in said province of Veragua, including from sea to sea, which commences from where your said conquest and colonization begins, and is to terminate at the large river near 'El Pomiente,' on the opposite side of Cape Camaron, where the banks of said river, on the Honduras side, trend within the government of said province of Honduras; and, in like manner, should there be found in said river any islands inhabited, or capable of being inhabited by Indians, which are not ascertained to have been conquered and colonized by Spaniards, you can proceed to make conquest of them, and provide that the navigation and fishery and advantages of said river may be in common, yet at the same time you are not to approach within fifteen leagues of the Lake of Nicaragua, inasmuch as these fifteen leagues, together with said lake, have to remain and do remain under the government of Nicaragua; but the navigation and fishery of that portion of said river which remains to you, and of the said fifteen leagues and lake which remain to Nicaragua, are to be enjoyed in common; and we likewise give you authority to make conquest of and colonize the islands which happen to be in the vicinity of said land in the North sea; yet, at the same time, you are not to enter within the limits and bounds of the province of Nicaragua, nor within the other provinces which are assigned to other governors, nor any which may be colonized by or apportioned to any other governor."

On the forty-fifth folio, also on both pages, there is to be found the license to make conquest of and colonize the territory therein designated as the government of Captain Diego Gutierrez, dated at Madrid on the sixteenth of December, one thousand five hundred and forty, and contained therein is the paragraph which, copied word for word, says as follows: [It is entirely similar to the preceding one, and for that reason is not copied.] On the sixty-sixth folio there is a reply made by the prince, at Valladolid, on the ninth of May, one thousand five hundred and forty-five, to Diego Gutierrez, governor and captain-general of the province of Cartago, in answer to his letter of the thirtieth of November, one thousand five hundred and forty-three, addressed to the Emperor, in relation to the events that had occurred since his arrival; and the third paragraph, copied word for word, is of the following tenor:

"You say that you were commanded by his Majesty not to approach

within fifteen leagues from the lake of Nicaragua; and that the outlet thereof, which approaches the coast, is at the point where your government adjoins the other, and that the windings of the outlet up to the mouth thereof are what the inhabitants of Nicaragua call twenty-two or twenty-three leagues; and that if you cannot reach within fifteen leagues of that place, you will be unable to derive any benefit from the donation which his Majesty has made to you, and you represent that your means have become exhausted, and you entreat that a declaration thereupon be made. He will direct that the whole subject be looked into, and such provisions therein made by him as he shall see fit, and as shall accord with justice; meanwhile you are to observe the orders and instructions which have been hitherto communicated to you."

On the one hundredth folio, upon each side of the leaf, there is to be found a royal order issued at Madrid on the fourth of August, one thousand five hundred and sixty-one, addressed to the council and ayuntamiento of the city of Castile of Asturia, which, copied entire, is as follows:

"The king, council of justice, to the rulers, knights, squires, servants, and good men of the city of Castile of Asturia: I saw your letter of the twenty-first of November of the year last past, of fifteen hundred and sixty, wherein you make mention of the colony which you have sent from your town to the port of San Geronimo, which is in the province of Cartago, and the hope you entertain of discovering great wealth in that locality, on account of the knowledge which you possess of the soil, and of the industrial pursuits which you have already undertaken and are now undertaking, and which you have conducted under the command of Juan de Estrada Rávago, a clerk in the office of the licentiate Cavallon, upon whom that government has been bestowed; and I have felt great satisfaction at that discovery and colonization which you have effected, and at the expectation which you entertain that the soil is to be very productive, and I accordingly compliment you, and express my acknowledgments for the labors you have performed there, and the good order which you seem to have preserved in every respect; and I charge you to continue that which you have commenced, and that you will endeavor to civilize said people, and reclaim the lands which you shall possess in that district, and that the Indians be well treated, and educated in the faith of the holy Catholic church; that application be made to us whenever it can well and rightly be done, and that I shall order your services to be kept in mind, so that you may receive the reward which you have justly merited. As to what you write, requesting us to appoint said Juan de Estrada Rávago, clerk, to be your pastor and prelate, on account of his being well-deserving and well-fitted for said charge, it appears to us at present to be too soon to appoint a prelate in that country, from the circumstance that it is so short a time since it has begun to be settled, and the population is so scanty; but the request you make shall be kept in mind hereafter, as also to reward said Juan de Estrada Rávago, according to what he has merited and does merit, and according to justice and his personal deserts. Madrid, August fourth, one thousand five hundred and sixty-one. I, the king.

Countersigned, De Erasso. Signed, De Vasquez, Castro Xarava, Valderrama, Gomez Zapata."

On the one hundred and first folio is to be found another royal letter, addressed to Juan de Estrada Rávago, which, copied word for word, is as follows:

"I, the king. Juan de Estrada Rávago: I have seen your letter of the twenty-first of November of the year last past, one thousand five hundred and sixty, written at Castillo de Asturia, which is in the province of Cartago and Costa Rica; and from that letter, and from the report which you have forwarded to us, and from what has been written to us from that city, I have understood how you have labored in the discovery and colonization thereof, and how the licentiate Cavallon, under commission from our president and the auditors of the royal board of control for the colonies, sent you to make said discovery, and how you went there by sea and returned by land, with a number of the native inhabitants and animals, and I feel great satisfaction at what you have done, which, according to your report, I consider to have been rightly performed, and I feel to have been benefited by the labors which you have performed there; and I trust in our Lord that, having united with said licentiate Cavallon, you will prosecute its discovery to a conclusion, and learn its hidden resources; and that the native inhabitants will receive great benefit in their education and conversion to our holy Catholic faith, to which end, with your good zeal and Christianity, you will bestow the proper attention; and, accordingly, I charge you to continue that which you have commenced, and to endeavor to effect the improvement of that colony, and that we may be rendered such advantage therefrom as can justly and rightly be done; and that you in particular, as a priest and ecclesiastical personage, acquire great influence with the Indians and with their good treatment and instruction in the doctrines of our holy Catholic faith, and inform us constantly of what shall transpire there, and suggest whatever may be necessary to be done on our part, who, on account of your services and the labors you have performed and will perform, will order it to be borne in mind that you receive the reward that shall appear to be just and such as you deserve. At Madrid, on the fourth of August, one thousand five hundred and sixty-one. The king. Countersigned, De Eraso. Signed by the same."

And on the one hundred and first folio, on both sides of the leaf, there is to be found another royal letter, addressed to the licentiate Cavallon, which, copied word for word, is of the following tenor:

"The king, to the licentiate Juan Cavallon, our procurator of the royal board of control for the colonies: By letters from Juan de Estrada Rávago, and from the city of Castillo de Asturia, I have learned how our president and auditors of said royal board of control of the colonies gave you instructions, through our principal alcalde of the province of Nicaragua, to proceed from thence to make discovery of and colonize the province of Nuevo Cartago and Costa Rica in a positive manner; and as you, in compliance thereof, and in view of the services which would be rendered to our Lord and us therein, you formed the determination to make an exploration and colonization of

said territory ; and you concerted with said Juan de Estrada Rávago to go and ascertain about it ; and, in accordance therewith, you both agreed upon the necessary preparations for said purpose, and you came to the conclusion that said Juan de Estrada Rávago should go by sea and you by land ; and, accordingly, said Juan de Estrada went with about sixty men, and disembarked at the port of San Geronimo, which is in said province of Cartago and Costa Rica, where it appears that he colonized said town of Castillo de Asturia, and that you there afforded him assistance with the force which you brought thither by land ; and I have been pleased to hear what has been effected by this discovery and colonization, because it appears that it has been actually accomplished, according to the report which has been transmitted to us by said Juan de Estrada Rávago ; and I feel confident that, having succeeded in annexing said territory to ourselves, the result will be the exploration and discovery of the hidden resources which it may possess, and that the natives thereof shall be conducted within the pale and brought to the knowledge of our holy Catholic faith ; and, accordingly, I charge you, that as it is yourself who has effected that discovery and colonization, that you proceed to do there whatever is best in accordance with the interests of the Lord our God and of myself, paying regard, in every respect, to the order which we have issued in respect to the new colonies and discoveries ; and that you take care that the natives are well treated, and that we are well esteemed therein for what we rightly and justly can be ; and that you prosecute the discovery of this territory, and that you found such settlements therein as may appear suitable to you, leaving therein such regulations and system of government as you may see proper to adopt, when you see fit to return to reside in said Audience, in order to undertake there the said duties of prosecuting attorney, which we have now anew bestowed upon you ; for which, in regard to the services you have already bestowed and will hereafter bestow in this discovery and colonization, just as before, where you have served us, we shall order that you be kept in remembrance, so as to receive the reward which you may be entitled to. From Madrid, on the 4th of August, 1561. I, the king. Countersigned, De Eraso. Signed by the same."

The report is correct, and the insertions correspond word for word with the documents which are referred to in the book above mentioned, which is preserved in the archives under my charge. And to authenticate the fact, I affix my signature to these presents, consisting of eight leaves, of the fourth seal, with the rubrics that are used in Seville, on the 4th of October, 1850.

ANICETO DE LA HIGUERA.

For the certificate and papers requested, eighty-two reals.

[Government of the province of Seville, L. 2.]

Don Aniceto de la Higuera, by whom the preceding certificate is authenticated, is, as he styles himself, keeper of the archives in the Indian bureau of this city ; and in order that it may be known, I, as the governor of the province, sign these presents, at Seville, on the 20th of February, 1851.

JAV'R CAVESTANY.

[Ministro de la gobernacion, I. s.]

The minister of the government of the kingdom, I certify that D. Javier Cavestany is, as he entitles himself, governor of the province of Seville, and that the signature affixed to the preceding certificate is the same which he is in the habit of using in all his public documents ; and for such purposes as there may be occasion to have them used, I give these presents, at Madrid, on the 24th of February, 1851.

JERMIN ARTETA.

Don Luis de la Torre Ayllon, under secretary of the department of state, &c., &c. ; I certify that Don Jermin Arteta, by whom the preceding document is legalized, is the minister of the government of the kingdom, as he styles himself, and the signature and rubric placed at the foot appear to be his own ; and in authentication of this I give these presents, at Madrid, on the 27th of February, 1851.

LUIS LOPEZ DE LA TORRE AYLLON.

[Ministro de Estado, I. s.]

B.

[Translation.]

Charter granted to Don Diego de Artieda, appointing him governor of the province of Costa Rica.—1574.

I, Don Aniceto de la Higuera, of the illustrious college of advocates, and of the association of the friends of the country of Seville, secretary of her Majesty, and honorary auditor of war and marine, and keeper of the archives of the Indian bureau in said city,

Certify: That there having been addressed to me by the most excellent Count of San Luis, secretary of state and of the department of government of the kingdom, the royal order made at Madrid on the twenty-seventh of May, one thousand eight hundred and fifty, which, copied word for word, says as follows: "Bureau of foreign affairs. Her Majesty the Queen has thought proper to grant permission to Don Felipe Molina, minister plenipotentiary of Costa Rica at this court, either in person or through the medium of some one empowered by him, to assist in ascertaining from the archives of that office the boundaries of said republic, comprising the ancient province of the same name, and the district of Nicoya, where the captaincy-general of Guatemala formerly existed ; ordering that, as occasion requires, there be freely delivered to said plenipotentiary copies of such documents as are not reserved, which may tend to establish the boundary lines referred to. I inform you of this by royal order for the purposes to which it applies, and as additional to that of the nineteenth of the present month. God preserve you many years. Madrid, the twenty-seventh of May, one thousand eight hundred and fifty. San Luis. The archive-keeper general of the Indies. Seville."

Señor Don José Maria Gutierrez, honorary secretary of her Majesty and agent of Señor Don Felipe Molina, minister plenipotentiary of Costa Rica, having presented himself before me at the same time, I exhibited to him the bundle of papers preserved among these archives, inscribed "Office of the Secretary of New Spain. Registers letter X." A volume entitled "Costa Rica—for the years from one thousand five hundred and sixty-five up to one thousand six hundred and two;" which is a bound volume, and contains one hundred and seven double pages, and at the sixty-sixth page, over, is to be found the document which has been designated by said gentleman for the purpose of this attestation, which, being copied literally, reads thus: "Marginal note—the title of governor and captain general of the province of Costa Rica, for Captain Diego de Artieda and for his son or brother, or any person whom he may name. D. Phelipe, &c. In consequence of the satisfaction you, Captain Diego de Artieda, have given us, and the services you have rendered us, which we wish you to continue, for the increase of our royal crown of Castille, we have ordered that you will take along the treaty and capitulation of the province of Costa Rica, in which treaty there occurs the following chapter: In the first place, we give you permission and power to reconnoitre, people, and pacify the aforesaid province of Costa Rica, and the other lands and provinces which may be included within the same, which is from the north to the south seas, in latitude and longitude, from the confines of Nicaragua, on the side of Nicoya, fronting the valleys of Chiriqui, as far as the province of Veragua, and we present you with the government and captaincy general of said province of Costa Rica, and all the other lands which, as above stated, are included in the same, for all the days of your life, or that of your son or heir, or of any person whom you may name, with a salary of two thousand ducats, taken yearly from the produce and revenue which may accrue to us in said province; it being understood that, in the failure of such produce or revenue, we shall not be obliged to order any part of said salary to be paid to you, and to that effect we will direct the proper title and office to be given to you, you therefor fulfilling and observing said treaty and chapter which is inserted above. It is our will and pleasure, by these presents, that you shall enjoy, and that henceforward, and for the balance of your life, you be our governor and captain-general of said province of Costa Rica, and of the other lands and provinces which may be included within the same, which is from the north to the south seas, in latitude and longitude, from the confines of Nicaragua, on the side of Nicoya, fronting the valleys of Chiriqui, as far as the province of Veragua to the south, and to the north from the mouths of the channel, which is, in those parts belonging to Nicaragua, all the tract of land as far as the province of Veragua; and that, after your death, said government and captaincy-general shall be held by a son or heir of yours, or by any person that you may name to that effect, according and in the manner that you might have held the same, and that you may hold and exercise, as well as them, our civil and criminal jurisdiction with the offices of justice which may be located in said province of Costa Rica, and the lands and villages above mentioned; and, by this our letter, we order all courts, justices, municipal officers, gentle-

men, squires, officers, and good men of all cities, towns, and places, to be found in said province lands and populations which are specified, and to our officers residing, or who may hereafter reside therein, that, as soon as you shall be required by means of these letters of ours, without any further call or delay whatever, without consulting or waiting for another letter of ours, or a second or third order, they shall take and receive from you, the aforesaid Captain Diego de Artieda, and after you from your son or heir aforesaid, or any person that you may name, the oath and solemnity required in such case, and which you must make; which being done by you and them, they shall receive and hold you for our governor and captain-general of said province of Costa Rica, and the population appertaining thereto, and allow you, and freely consent that you and them shall use and exercise said offices, and fulfil and execute our law by your or your alcaldes, your lieutenants and theirs, whom you may, and they may, dismiss and remove, whenever and when our service and the execution of our law shall require it; and to appoint others in their places, and to try and determine all suits and cases, both civil and criminal, which may occur in said province and lands above mentioned, and towns peopled, or which may hereafter be peopled, as well between persons residing there and the natives who may subsequently reside there, and you and your aforesaid son or heir, or the person that you may name for said government; and our alcaldes and lieutenants aforesaid may levy the duties annexed and belonging to said offices, and make whatever inquiries in cases of pre-emptive rights, and all other things belonging to and concerning said offices; and that, in order that you may exercise and execute our law, all shall co-operate with you, with their persons and property, and give you, and cause to be given to you, all the favor and assistance which you may ask or require; and they shall respect and obey you in all things, and fulfil our orders and the orders of our lieutenants aforesaid, and that in regard to this, or any part of it, they shall not place, or attempt to place, any obstacle or hindrance, inasmuch as we, by these presents, receive and have received you as holder of said offices, to use and exercise the same; and we give you power and privilege, to you and to your aforesaid son or heir, or any person that you may name, and to their lieutenants aforesaid, to use and exercise the same, in case that any of them should refuse to admit you; and by this, our letter, we order any person or persons having jurisdiction in said province and lands, that, as soon as they shall be requested by you, the aforesaid Captain Diego de Artieda, they shall give up and deliver the same to you, and shall no longer exercise it without our permission and special order, and after you to your aforesaid son or heir, or to any person that you may name, under the penalty incurred by those who exercise public and royal functions without authority to do so; inasmuch as we, by these presents, suspend them, and hold them for suspended; and moreover that, in regard to the fines belonging to our exchequer, which you and your alcaldes and lieutenants may levy, the same shall be carried into effect and caused to be executed by you, and delivered to the treasurer of said province; and we order, moreover, that if you, the aforesaid Captain Diego de Artieda, and, after you, the person who is to suc-

ceed you in said government, shall understand it to be for the good of our service and the execution of our law, that any persons among those who at present reside, or may reside, in said province and lands shall quit, and not remain nor enter the same, and come to present themselves before us, you may, in our name, order and cause them to quit, according to the royal ordinance which relates to the subject, giving to the person whom you may expel the reason for so expelling him; and, in case of its appearing necessary to you to keep the matter secret, you shall give said reasons under seal and cover, and, on the other side, you will send us a duplicate of the same, in order that we may be informed accordingly; but you will bear in mind that when you shall have occasion to expel any one from the country, unless it be without any great cause, and to exercise said offices, we give you full power, with all the rights incident, dependent, and annexed to the same; and it is our pleasure and will that you have and receive for salary, each year of your government aforesaid, two thousand ducats, of the value of three hundred and seventy-five maravedis a piece, which you will enjoy from the day that you sail from the port of San Lucar de Barrameda, or from the city of Cadiz, in pursuit of your voyage, and for all future time that you shall hold said government; which salary we order our functionaries of said province of Costa Rica, and the lands appertaining thereto, to give and pay you yearly, out of the revenues and produce which in any way shall belong to us in said province and government, and, there being no revenue nor produce to be collected, we shall not be bound to cause you to be paid anything; and it is our will and pleasure that the same salary shall be had and received with the government and captaincy-general aforesaid by your said son or heir, or any person that you shall name and who shall succeed in said charge; and that he enjoy said salary from the day that he shall be received and commence to use and exercise said offices, and to all future time of their holding the same; and that our functionaries aforesaid shall take your and their receipts of payment, with which, and with the copy of this our decree, signed by a public notary, I order that whatever shall be given and paid in conformity with the same be received and audited, and that no one shall do anything contrary to this provision in any way whatever.

Given at Aranjuez, the 18th of February, 1574.

I, THE KING.

By order of his majesty.

ANTONIO DE ERASO.

Signed by the president.

JUAN DE OVANDO.

The above is a faithful copy of the document referred to, kept in this archive under my charge; and in testimony thereof I sign these presents, in six pages of the fourth seal, with my usual signature, in Seville, the 19th of August, 1850.

ANICETO DE LA HIGUERA,

Busqueda certificate and papers, 73.

D. Manuel de Podio Valero, first officer of government of this province, and secretary ad interim of the same :

I certify that the foregoing document has been issued by the keeper of the archives of the general of the Indies of this city, and that the signature attached to it is the same as that which he is wont to affix in his writings, and is known as his ; and I sign these presents for the proper effects, in Seville, the 2d of September, 1850.

MANUEL DE PODIO Y VALERO.

V. B. :

CANESTANY. [L. s.]

The under secretary of the government of the kingdom :

I certify that Don Manuel de Podio y Valero, by whom the foregoing certificate is issued, is such secretary of the government of the province of Seville, and that the signature attached to it is the same that he uses in all his writings ; and in order to subserve the proper ends of justice, I issue the present with the approval of the most excellent minister of the government, at Madrid, the 10th of September, 1850.

JUAN DE LA CRUZ OSES.

Vo. Bo. :

SAN LUIS.

[L. s.]

Don Antonio Caballero, knight grand cross of the royal American order of Isabel the Catholic ; commander of the order of Charles the Third ; knight of the illustrious and military order of St. John of Jerusalem ; commander of the legion of honor of France, &c. ; secretary to her Majesty for signing decrees, and under secretary of the department of state, &c., &c. :

I certify that Don Juan de la Cruz Oses, by whom the foregoing document is authenticated, is such under secretary in the department of the government of the kingdom, and his the signature affixed at the end ; and in testimony thereof I issue this present, in Madrid, on the 12th of September, 1850.

ANTONIO CABALLERO.

[SEALED.]

C.

[Translation.]

Report sent by Don Diego de la Haya, Governor of Costa Rica, to the court of Spain, in 1719.

I, Don Aniceto de la Higuera, of the college of advocates, and of the economical association of the friends of the country of Seville, secretary of her Majesty, and honorary auditor of war and marine, and keeper of the archives of the Indian bureau in said city,

Certify : That there having been addressed to me by the most excellent Count of San Luis, secretary of state, and of the department of government of the kingdom, the royal order made at Madrid on the twenty-seventh of May, one thousand eight hundred and fifty, which, copied word for word, says as follows :

“ BUREAU OF FOREIGN AFFAIRS,
“ *Madrid, May 27, 1850.*

“ Her Majesty the Queen has thought proper to grant permission to Don Felipe Molina, minister plenipotentiary of Costa Rica at this court, either in person or through the medium of some one empowered by him, to assist in ascertaining from the archives of that office the boundaries of said republic, comprising the ancient province of the same name, and the district of Nicoya, where the captaincy-general of Guatemala formerly existed, ordering that, as occasion requires, there be freely delivered to said plenipotentiary copies of such documents as are not reserved, which may tend to establish the boundary lines referred to. I inform you of this by royal order, for the purposes to which it applies, and as additional to that of the nineteenth of the present month. God preserve you many years.

“ SAN LUIS,
“ *The Archive-keeper General of the Indies, Seville.*”

Señor Don José Maria Gutierrez, honorary secretary of her Majesty, and agent of Señor Don Felipe Molina, minister plenipotentiary of Costa Rica, having presented himself before me at the same time, I exhibited to him the bundle of papers preserved among these archives, inscribed : “ Office of the Secretary of New Spain. Secular. Court of Appeal of Guatemala. Letters and records from the governors and magistrates of said judicial district.” From the year one thousand six hundred and sixty-two, until the year one thousand seven hundred and sixty ; and among the papers therein contained, there has been pointed out to me, for the purpose of making this certificate, the record of the letter transmitted by the governor of the province of Costa Rica, Don Diego de la Haya, which is, word for word, as follows :

LETTER OF THE GOVERNOR.

“ *Cartago, March 15, 1719.*

“ SIR : From the time I took possession of the government of this province of Costa Rica, I took the greatest care and pains to ascertain its condition, and what was most needful for its security, for which purpose I have drawn up (in compliance with my duty) the report which accompanies this ; which, taken into consideration by the high and sovereign intelligence of your Majesty, I trust will meet with your royal approbation, in order that thereby this province may obtain the military force necessary for its defence ; and that I may be the fortunate man to sacrifice myself in conquering the Thalamancas, which undertaking I shall be the first to embark in, for the reason that your Majesty is so desirous that these heathen should be converted to the

light of grace ; they who, scorning the tie which was most advantageous to them, rose in revolt in order to live for the gratification of their passions. God preserve your Majesty many years, as your subjects desire, and as Christianity requires.

“DIEGO DE LA HAYA.” [A rubric.]

REPORT.

SIR: This province of Costa Rica is situated between two others ; that of Varagua and that of Nicaragua—being also encircled on the south by a small strip of the district of Nicoya. The length of said province is one hundred and sixty leagues, commencing at the Rio de Boruca, (the same which separates its jurisdiction from that of the province of Veragua,) and extending to the place designated Rio del Salto, which lies between this province and said province of Nicaragua. In width it extends sixty leagues, which are to be reckoned from the valley and coast of Mathina—which is in the northern part—as far as Puerto de la Caldera, where it is washed by the waters of the south sea. And the jurisdiction of this province is separated from said district and jurisdiction of Nicoya by the Rio del Tempisque. In order to harmonize with the kingdom on the main land, there might be given to this province the name of the “Southern Peninsula,” inasmuch as, while that kingdom on the main land forms an isthmus or tongue of land of thirty leagues extending from Puertobello to Panama, and separates the northern and southern oceans, this province, with an isthmus of sixty leagues, separates them in the same manner, as it contains therein other places so narrow, that it is hardly twenty leagues from one sea to the other, which, although discovered, are not frequented, because an enemy cannot easily approach them.

* * * * *

On the leeward side of this valley is the castle of San Lorenzo, distant sixty-eight leagues from the mouth of the Chagres river ; and twelve leagues further down is the city of Portobello, and between this valley and said castle there are settled and colonized, at some distance from the coast, the Guaymiles, Doraces, Chanquines and Talamancas Indians, and these latter are the nearest to this province ; in passing through which may be defined the mouths of the Toro, the bayous of the Almirante, other headlands and inlets, and the island of the Tayares Indians, the most warlike in all America, for they have no familiarity or intercourse with any nation. To the windward of said valley of Matina, and at a distance of twenty leagues further along the coast, is the mouth of the river San Juan, at which the city of Grenada is being erected.

* * * * *

To the windward of said port of Caldera is to be found the belt of land belonging to the district of Nicoya, which is thirty leagues in length and eleven in width, and it merely contains one village of Indians, of all ages and both sexes, who are now ruled and governed by a principal alcalde, appointed by your Majesty ; and it is eighty leagues from said district to the port of Realejo.

* * * * *

The province of Talamanca is contiguous to this on the eastern side, which said province is situated between the valley of Matina and the mouth of the Castilla de Chagre, at a distance of seventy leagues from this city of Cartago, with a road by land, where the first settlement was effected on the "Rio de Estrella," called "Our Lady of the Conception," which was founded in the year one thousand six hundred and one, and in the year one thousand six hundred and ten said Talamancas rose in arms and killed said Spaniards who had remained there with some women. In the year one thousand six hundred and eighty-nine there came an order for the subjugation of Talamanca, and in the same year some priests arrived there, where they remained more than two years, having converted many heathens to the Christian faith, and from that time they maintained themselves there until the twenty-eighth day of September, one thousand seven hundred and nine, with a small garrison and some priests, upon which day they arose in arms and killed the reverend fathers Fray Pablo de Rebullida, and Fray Antonio de Zamora; also, ten soldiers, the wife of one of them, and a child; and information of what had occurred having been transmitted to the royal audience of Guatemala, it ordered the governor of that province (at that time Don Lorenzo de Granda y Balbin) to proceed to said district of Talamanca with two hundred men, which he performed in person, dividing his force into two bodies, one of which entered by the village of Tuis, and the other by that of Bornca, and united at the village of San Joseph de Cabecar, (the centre of the mountain region,) where they fortified themselves, killed a great number, and carried away to this city as many as five hundred and five of both sexes; of these some escaped, others died, and at the present date some two hundred are retained in the service of the Spaniards of this province, the conquest being terminated after this last event, on account of no orders having been issued authorizing it. In former years, from one thousand seven hundred and thirteen up to one thousand seven hundred and sixteen, there have arrived at this city several deputations from the Talamancas to beg for priests to administer the offices of religion; and finding there the Apostolical missionaries, named Fray Antonio de Andrade and Fray Alonzo Villarejo, for the purpose of carrying this design into execution, they had several consultations, requesting that means be devised for effecting it; but as the city of Guatemala was meanwhile destroyed, (on account of violent earthquakes,) all negotiation in regard to this subject was brought to an end, for the reason that said priests were withdrawn from their college of "Cristo Crucificado," (which is in said city,) leaving these aborigines to endure the miseries they had so repeatedly requested to be guarded against.

* * * * *

The district of Nicoya, which, as I have already shown your Majesty, is separated from this province by the Rio del Tempisque, possesses fertile lands, many cattle, and trees producing the plantain, (which fruit is the daily food of the Indians;) its climate is warm and humid, and congenial to its aboriginal inhabitants, for which reason I cannot find any better adapted for that purpose in this province.

and for the additional reason that it is more than one hundred and fifty leagues from Talamanca, which is the distance between that, on the north, and said district of Nicoya, to that of the south. I cannot refrain from bringing to the knowledge of the sovereign intelligence of your Majesty the little necessity there is for the salary which is paid to the chief magistrate of the district of Nicoya, (who is merely the *alcalde* of a village of two hundred souls, or thereabouts,) which strip of land, being so close to the district of Bagaces of this province, your Majesty might order to be annexed thereto, assigning as the governor thereof a lieutenant-general, in imitation of those of the city of Esparza and district of Matina, who receive no pay whatever; and moreover it would be a great relief to the residents of Vagaces to have their community annexed to this province, as they are very much in want of drivers to aid them in slaughtering the cattle, from which they extract the tallow to sell at Panama. The same representation was made to your Majesty by Don Juan Lopez de la Flor, governor of this province, during the year one thousand six hundred and sixty-five; and by a royal letter issued from the court of Madrid, on the twenty-third of April, one thousand six hundred and seventy-seven, your Majesty directed the bishop of the province of Nicaragua to make a report as to what was best to be done in this matter, and as I have no means of knowing what report may have been forwarded to your Majesty, it is my duty, and from the information I possess, to again repeat to your Majesty how much it would subserve the interests of this province if said district of Nicoya were attached thereto; in regard to which your Majesty will issue such orders as you may deem most advisable.

* * * * *

For these observations, which I lay before your Majesty, in relation to this subject generally, and for what I have remarked especially concerning this province, I hope that, comprehended by the high and superior understanding of your Majesty, I may be excused for having made so urgent a request in regard to matters which, in accordance with my duty, I have felt it my duty to bring to the royal notice of your Majesty, in order to insure the better security of the domains in this province, and the more speedy conquest of the Talamancas, although the double task which I have undertaken in this respect may have led me astray from making the special description which I intend to make of this above-mentioned province, in order to add this little service to the few others which I have already rendered your Majesty, at whose royal feet I now present it. God preserve L. C. R. P. of your Majesty, as your subjects desire and Christianity requires. Cartago, March 15, 1719. Diego de la Haya. A rubric.

The above insertion corresponds, word for word, with the documents which are referred to, and are preserved among the archives under my charge; and for the purpose of authenticating this fact, I sign these presents, containing twenty-six leaves of the fourth seal, with the accustomed rubric, at Seville, on the 7th of September, 1850. Interlined. "Al tiempo," "Valga."

ANICETO DE LA HIGUERA.

For the search, certificate, and paper, one hundred and fifty-six specie reals.

I, Don José Oller y Menareho, secretary of government of this province, certify that Don Aniceto de la Higuera, by whom the preceding document is authenticated, is, as he styles himself, keeper of the archives of the Indian bureau in this city, and that the signature placed at the foot thereof is that which he is accustomed to use in all his writings; and, in testimony of this, I affix these presents, (which will be certified to by the governor of Seville,) on this 12th of September, 1850.

JOSE OLLER.

Assented to.

CAVESTANY.

The under secretary of the department of government of the kingdom, I certify that Don José Oller, by whom the preceding certificate purports to be made, is such secretary of the government of the province of Seville, and that the signature which he attaches thereto is the same which he is accustomed to use in all his writings; and, for such purposes as they may be required, I give these presents, with the assent of the minister of government, at Madrid, on the 18th of September, 1850.

Assented to.

JUAN DE LA CRUZ OLLER, [L. s.]

SAN LUIS.

I, Don Antonio Cabellero, under secretary of the department of state, certify that Don Juan de la Cruz Oller, by whom the preceding document is authenticated, is, in fact, the under secretary of the department of the government of the kingdom, and that what purports to be his signature and rubric, placed at the foot thereof, is his own. In testimony of which, I sign these presents at Madrid, on the 24th of September, 1850.

ANTONIO CABELLERO, [L. s.]

Mr. Molina to Mr. Webster.

WASHINGTON, May 8, 1851.

SIR: Having understood that you intend to enter soon into conferences with the Nicaraguan minister in regard to the treaty concluded by Mr. Squier, the late chargé d'affaires of the United States to Nicaragua, with the government of that country, and observing that the 35th article of the treaty in question contains stipulations which are evidently injurious to Costa Rica, inasmuch as her right to the joint sovereignty over the port of San Juan, over the river of the same name, and over the navigation of Lake Nicaragua is not therein taken into account, I make bold to call your attention to that point, and

have to request that you be so good as to adjourn the closing of the negotiation alluded to until you have examined at leisure the documents which I have presented to-day, and which, I expect, will leave no doubt in the mind of the American government as to the justice of the claims of Costa Rica.

I have the honor to remain, with the highest consideration, sir, your most obedient, humble servant,

F. MOLINA.

Hon. DANIEL WEBSTER,

Secretary of State of the United States, &c., &c., &c.

Mr. Marcoleta to Mr. Webster.

[Translation.]

WASHINGTON, June 3, 1851.

Mr. Secretary of State:

MY DEAR SIR: In the message which the President of the United States addressed to Congress on the 22d of July, 1850, relative to the events and the occupation of the island *del Tigre* by the British naval forces, there is, page 180, document B, a literal translation of a note which Lord Palmerston addressed to Señor Castillon on the 16th of July, 1849, on the subject of the port of San Juan and the Mosquito coast.

Having been charged by my government to continue the mission of Señor Castillon in London, I deemed it my duty to reply to said note, stating the grounds upon which Nicaragua bases her rights to the possession of the territory, which the British government disputes.

As this reply is not to be found in the aforesaid message, and thinking it may serve to throw some light upon the question, I have the honor of sending the annexed copy to the department, with a view of its being considered along with the other documents which have reference to this important question, in order to effect the objects aimed at. The government of Nicaragua fully hopes that, when the Secretary of State shall have possessed himself of the contents of the document herewith enclosed, he will allow it to exercise a proper weight in the estimate of the justice and reason that concur on the side of Nicaragua in this vital question of her political existence, and in support of her legitimate rights to so essential a part of her territory such as the coast and country of Mosquitos.

I avail myself of this new opportunity, Mr. Secretary of State, to renew to you the assurances of my highest consideration.

J. DE MARCOLETA.

Hon. DANIEL WEBSTER,

Secretary of State.

[Translation.]

LONDON, *October 27, 1849.*

MY LORD: The undersigned, chargé d'affaires of the State of Nicaragua, has the honor to acknowledge the receipt of copies of two notes which the right honorable Viscount Palmerston, her Britannic Majesty's secretary of state for foreign affairs, addressed to Mr. Castillon, respectively, on the 16th and 17th of July last.

The undersigned having been instructed by his government to continue to cultivate relations of friendship and good understanding between the two countries, and to follow up the discussion of those questions which may be of interest to the two governments, especially the one alluded to in the first of the two notes aforesaid, he thinks it his duty to address a few remarks to the right honorable Viscount Palmerston on the contents of said note, always excepting that portion of it which relates to the debt of Nicaragua in favor of English subjects; the latter having reserved themselves for an understanding on the subject with the government of the State, through the interposition of her Majesty's consul in Central America.

The bases upon which the right honorable Viscount Palmerston thinks it proper to rest his principal argument in the note of the 16th of last July are—firstly, that the Mosquito territory did not form an integral portion of the Spanish dominions in Central America; secondly, that in the treaties of 1783 and 1786, between England and Spain, it was less a question of proving the rights of the last-mentioned power than to regulate the relations of British subjects who exercised their industry and carried on their trade along the coast with the inhabitants of the country and the authorities which the Spanish government had established there.

Upon bases like these, the British government seems disposed to demonstrate the unfairness of the claims of the State of Nicaragua to the possession of the port of San Juan.

That Spain has always considered the territory and the coast of Mosquito as constituting an integral portion of her territory and sovereignty in Central America is an incontrovertible point, and a question which has already been authoritatively settled; at least it is so proved by the law entitled "*Recopilacion de Indias*," No. 6, chapter 15th, book 2d—a law by which the administration of justice in the kingdom of Guatemala was regulated; which kingdom literally and textually received as boundaries the northern sea on one side, and the southern sea on the other. The tenth article of the constitution of Cadiz, of the 19th March, 1812, declared that Guatemala and the interior provinces to the east and west, as well as the islands contiguous to the two seas, constituted an integral part of the Spanish dominions.

Consequently, that power has always exercised acts of possession and of sovereignty over all those coasts, such as the royal ordinance of October 18, 1792, the object of which was to establish a custom-house at the cape of *Gracias á Dios*; that of February 26, 1796, declaring the port of San Juan open to commerce; that of March 28,

of the same year, for the purpose of encouraging cotton plantations, for building a town in the port aforesaid, and for constructing flat-boats suitable to the navigation of the river; and, finally, the ordinances of the 5th and 20th November, 1803, granting privileges to those who might come to settle at Rio Tinto, at Bluefields, and at Cape Gracias á Dios.

The undersigned does not believe that any argument or solemn protestations, on the part of the British cabinet, can set aside the legal declarations and royal ordinances above mentioned: he knows only that England has always recognised the Spanish government, and that the recognition of the constitution of Cadiz, of March 21, 1812, contained no reservation whatever.

It is most true, however, that British subjects had previously gone to establish themselves on the Mosquito coast; that one of the governors of Jamaica (Lord Albemarle) was the first to give the title of king to one of the chiefs of the wandering tribes that overrun the territory of Mosquitos; but, independently of the fact that such establishments and such concessions cannot constitute a right, it is also clear that, in consequence of certain claims on the part of Spain, negotiations were set on foot, which led to the formation of public and solemn treaties, the first of which was signed in Paris on the 10th of February, 1763, and the seventeenth article of which stipulates, firstly, the demolition of the forts which have been erected in the bay of Honduras and in other parts of the Spanish territory in the new world; secondly, the guaranties and concessions which the Spanish government had granted to British subjects engaged in cutting, transporting, and freighting logwood, with perfect enjoyment of those advantages *on the coasts* and other portions of the American continent subject to Spain.

Causes and motives which are already known subsequently led to the conclusion of the treaty of 1783, and to the convention of 1786, concerning which it would be useless to enumerate the articles having special reference to the object now under discussion.

All these acts, having again received the sanction of the two governments, serve to prove that Spain maintained, and that England recognised, the rights which the first-mentioned power exercised over those countries; for how could it be possible that the British government would have consented to abide by, and to submit to, certain conditions and stipulations, and to conform to territorial boundary lines which had been drawn by a power in a country which did not belong to it?

It would have been more regular and more rational for Great Britain to have treated directly with the sovereign, or with the government of that country, if there had really been one in existence.

It is most true, also, that the word "frontier" occurs in the 14th article of the convention of 1786; but the undersigned is induced to believe that the introduction of this word originated in some slip of the pen on the part of the writer, rather than in the existence and conviction of such a fact, because that word is flagrantly at variance with the sense and the text of the other articles contained in the treaty of 1783 and in the convention of 1786.

The term "frontier," moreover, indicates certain points of separation already agreed upon; it is a line of demarcation between two neighboring countries, foreign to each other, established by competent authority, and by commissioners appointed *ad hoc* by the parties interested. Is there any act of this description in existence, therefore, which could be cited in support of the interpretation which the right honorable Viscount Palmerston thinks it his duty to give to the 14th article of the aforesaid convention?

Again: it is generally recognised as a principle, that all treaties, besides the signature of plenipotentiaries, must also contain a pledge of honor, morally given by the high contracting parties, for carrying out the provisions of such treaties, not only in regard to the letter of the same, but in relation to the very spirit of the clauses inserted therein. The British government was perfectly well aware what were then the interests of Spain in negotiating about the matter; nor was the said British government ignorant of the fact, that the latter power would not have signed those conventions if England had refused to recognise the rights which Spain was exercising over the territory and the coast of Mosquito.

The term "frontier," therefore, which is mentioned in the despatch of the right honorable Viscount Palmerston, can only refer to the demarcation of certain points which separate two countries already civilized from those that are not so, as it is the case in Brazil and in the United States of North America.

The acts of the governors of Jamaica (Lord Albemarle and Sir ——— Dallas) being of a date long previous to the stipulations and the treaties mentioned above, cannot serve as precedents for the purpose of establishing an actual right, seeing that the tendency of these very treaties is to destroy the traces of such acts.

Having already proved that Spain exercised sovereignty over the territory in question, and that England had recognised that sovereignty by public and solemn treaties, the undersigned is of opinion that Central America, and especially Nicaragua, could claim to exercise the rights belonging to them in virtue of the very act of independence, and a possession which has neither been interrupted nor disputed until these latter times, without incurring the application of the *res inter alios*, inasmuch as the same could not have been applied to the old country.

And if there is no formal declaration in existence relative to the recognition by Spain of the independence of the Central American States, that independence may at least be considered as virtually recognised, since the Spanish Cortes, at their sitting of September 3, 1836, authorized the government to conclude treaties with the new American States, because the political condition of those states was considered as a positive fact.

Nicaragua, then, has been at liberty, freely and legitimately, to exercise her rights of sovereignty over the whole extent of her territory; and Great Britain has never dreamed, since the period of the independence of that State, until recently, to support what are called the rights of the Mosquito chief; but, on the contrary, she recognised the various constitutions of the country, where the boundaries had

been legally defined. At the period when the confederacy of the States contracted a loan with the house of Barclay, the cabinet of St. James entered no protest in regard to the guaranty which was given to that house, based upon the revenues of the port of San Juan.

The right honorable Viscount Palmerston declares, in his note of the 16th of July last, already alluded to, that in his opinion, and according to the opinion of several other authorities, the territory of Mosquito comprises the mouth of the river San Juan. Admitting this hypothesis for an instant, the government of Nicaragua is, and ought to be, very much surprised that Mr. Christie should, on his own authority, have carried the boundaries of that territory beyond the mouth of the Serapiqui, thirty miles above, and as far as the rapids of Machuca. The government of her Britannic Majesty is sufficiently just and sufficiently enlightened to understand that this invasion has been accomplished without any participation on the part of the government of Nicaragua, which was not consulted on the subject, nor yet apprized of the fact, nor even called upon to maintain its rights, in that division of territory. The aforesaid government has been obliged to yield before the necessity imposed upon it by superior force, although in hope that the British government would not turn a deaf ear to the voice of justice and of reason.

If, on one side, the right honorable Viscount Palmerston believes himself sufficiently justified in approving and sustaining what has been done at the port of San Juan since the 1st of January, 1848, down to this day, the government of Nicaragua, on the other side, has reasons, no less equitable and powerful, to vindicate its rights, with that moderation which characterizes it, and at the same time with that persistency of purpose which is derived from conviction, and from the justice of the cause it advocates, without giving up the hope that its claims will finally be listened to, and duly appreciated, by a just and enlightened government, which prides itself upon its adherence to principles of distributive justice, which do not allow an interested party to constitute itself judge of a matter in dispute.

Consequently, the undersigned is thoroughly convinced that the government of her Britannic Majesty will not fail to submit the question now pending to arbitration, to which decision the government of Nicaragua submits in advance, as a proof of the desire which actuates it to preserve friendly relations with the British government; relations which may lead to a happy future, by developing the mercantile resources of the two countries, called upon respectively to fulfil a great destiny—a destiny which one of them has already, most fortunately, achieved, and which the other might easily attain, if the immense natural advantages she possesses, in every point of view, are not stifled in the birth.

The undersigned is also fully persuaded that the right honorable Viscount Palmerston will please to take into serious consideration the contents of this despatch, and accede to the propositions mentioned above, as the only and most efficacious mode of terminating the question in a manner at once the most honorable for the British government, and the most advantageous to both countries.

The undersigned avails himself of this occasion to renew to the

right honorable Viscount Palmerston the assurance of the high consideration with which he has the honor to remain his lordship's most humble and very obedient servant,

True copy:

J. DE MARCOLETA.

J. DE MARCOLETA.

No. 4.

Mr. Webster to Mr. Kerr.

DEPARTMENT OF STATE,
Washington, June 6, 1851.

SIR: On the 3d of September, 1849, a treaty between the United States and Nicaragua was signed at Leon, the 35th article of which relates to a ship-canal between the two oceans, through the territories of that State; refers to a contract entered into on the 27th of August, 1849, between the republic of Nicaragua and a company of citizens of the United States, styled the "American Atlantic and Pacific Canal Company;" requires the United States to recognise the rights of sovereignty and property which Nicaragua possesses over the line of said canal, and guaranties the neutrality thereof, so long as it shall remain under the control of citizens of the United States. This treaty was submitted by the President to the Senate in March, 1850. On the 19th of April next ensuing, however, a convention upon the same subject between the United States and Great Britain was signed in this city, by the 6th article of which it is stipulated that, if any differences should arise as to right of property over the territory through which the said canal shall pass, between the States or governments of Central America, and such differences should in any way impede or obstruct the execution of the said canal, the governments of the United States and Great Britain will use their good offices to settle such differences in the manner best suited to promote the interests of the said canal, and to strengthen the bonds of friendship and alliance which exists between the contracting parties.

Although it may be taken for granted that a part of the line of the canal here referred to would be in the bed of the river San Juan, or on the northern or southern bank of that stream, it is obvious that it would have been premature for the United States to assume the guaranty stipulated in the treaty with Nicaragua, until the position of the canal had been determined upon. The department is not aware that this has yet been done. It is well known, that for some time past there has been a dispute between the States of Nicaragua and Costa Rica respecting their boundary, and it is certain that until this shall be adjusted the United States could not undertake to guaranty to Nicaragua dominion over the line of the canal without, impliedly at least, deciding that dispute in her favor, and engaging to maintain that decision by force, should this become necessary. Though the President appreciates the friendship of Nicaragua, he cannot consent

even to risk doing an injury to any one of the other Central American States, by determining, without due examination, a controversy which it may have with any other of those States. If, however, a sense of duty were not sufficient to prevent the adoption of such a course on our part, the stipulation in our treaty with Great Britain, above referred to, makes it a positive obligation.

On the 5th of August last, Mr. Molina, the minister of Costa Rica at London, addressed a note to Mr. Abbett Lawrence, stating that his government, fully concurring in the philanthropic views set forth in the convention signed at Washington on the 19th of April, 1850, was willing to submit the question of her rights over the territories in dispute between Nicaragua and herself to the combined mediation of the United States and Great Britain, and to regard their joint decision as final, provided that Nicaragua shall have previously placed herself under a similar obligation. Mr. Molina is now the minister of Costa Rica at Washington. You will herewith receive a copy of a recent correspondence between him and the department upon this subject. In his note of the 31st of March, he states that his government claims a right of dominion over all the country lying on the southern bank of the river San Juan, from the Atlantic ocean to the Lake of Nicaragua, as well as on that portion of the aforesaid lake comprised between Fort San Carlos and the river La Flor, together with a right to the joint navigation of the above-mentioned river San Juan and of Lake Nicaragua. If, therefore, the line of the inter-oceanic canal should be on the south side of the river, or in the bed thereof, a guaranty by us to Nicaragua of dominion over it would be in defiance of the claim of Costa Rica referred to. Under these circumstances, you will represent to the government of Nicaragua that this government cannot undertake to guaranty the sovereignty of the line of the canal to her, until the course which that work shall take with reference to the river San Juan and its terminus on the Pacific shall be ascertained, and until the differences between Nicaragua and Costa Rica, respecting their boundary, shall be settled. You will suggest that it would be advisable for them to empower the minister of Nicaragua here to adjust the question of limits; and you may add, that it is quite probable, if it should be adjusted under the auspices of both Great Britain and the United States, that adjustment might be made to embrace a settlement of any other question which Nicaragua may have with other powers respecting her territories on the Caribbean sea. If, however, the Nicaraguan government should refuse to authorize Mr. Marcoleta to negotiate upon this subject, you will then intimate to her authorities that the United States will not regard with indifference any attempt on her part to wrest by force from Costa Rica any territory of which the latter State may now be in peaceable possession.

I am, sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

J. BOZMAN KERR, Esq., &c., &c., &c.

No. 6.

*Mr. Webster to Mr. Kerr.*DEPARTMENT OF STATE,
Washington, June 6, 1851.

SIR: If an inquiry should be addressed to you, in Nicaragua or elsewhere in Central America, as to whether the United States have recognised the Mosquito kingdom, or contemplate such a measure, you may answer decidedly in the negative. Any other course would be at variance, not only with the policy hitherto pursued by the United States in regard to the aboriginal inhabitants of the American hemisphere, but also with that of the European nations who made discoveries and planted colonies there.

I am, sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

J. BOZMAN KERR, Esq., &c., &c., &c.

*Mr. Webster to Mr. Molina.*DEPARTMENT OF STATE,
Washington, June 10, 1851.

The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of Mr. Molina, envoy extraordinary and minister plenipotentiary of the republic of Costa Rica, accompanied by a printed memoir and documents in manuscript relative to the boundary between that republic and the republic of Nicaragua. In reply, the undersigned has the honor to acquaint Mr. Molina that his communication will be taken into respectful consideration.

The undersigned avails himself of this occasion to offer to Mr. Molina renewed assurances of his very distinguished consideration.

DANIEL WEBSTER.

Señor DON FELIPE MOLINA, &c., &c., &c.

*Mr. Molina to Mr. Webster.*WASHINGTON, *June 21, 1851.*

SIR: In compliance with your desire, I here proceed to state to you what I consider to be the pretensions, claims, and rights of Costa Rica with respect to the river San Juan and the territories in dispute between her and Nicaragua. They are as follows:

The republic of Costa Rica maintains, in my opinion, with perfect justice, and on the most clear titles, as her frontier, the whole course of the river San Juan, and the shores of the Lake of Nicaragua from

the place where that river issues from the lake to a point opposite the mouth of the river La Flor, on the Pacific, including, of course, in this demarcation the district of Guanacaste, otherwise called Nicoya. Costa Rica likewise claims an equal right with Nicaragua to the navigation of the aforesaid river San Juan and of the lake, and to the dominion of Port San Juan. These propositions I undertake to demonstrate in open conferences or debates with the minister of Nicaragua.

Consequently, my government is under the impression that no inter-oceanic communication ought to be established through the port, river, and lake in question, without the consent of Costa Rica, and her participation in all the direct and indirect advantages to be derived from said undertaking; and that Nicaragua, when contracting for said enterprise on her sole authority, has encroached on the rights of Costa Rica.

Nicaragua, on the other hand, assumes that she has a right to the exclusive navigation of the river San Juan and of the lake; that the port of San Juan appertains solely to her; that the territory of Costa Rica does not extend to the southern bank of the river San Juan, but, instead of that, ought to be bounded by a line drawn from a point on the Atlantic, situated midway between Port San Juan and Port Matina to the river Salto; and, finally, that the district of Guanacaste is a part of Nicaragua, and not of Costa Rica.

In order not to make this communication too long, I refer you, for the grounds on which the case of Costa Rica principally rests, to the memoir and documents that I have had the honor to transmit to you, and of which I beg to call your attention to the annexed extracts, (enclosures Nos. 1, 2, and 3.)

Having thus briefly stated what I consider to be the right of Costa Rica, I shall venture, as briefly as possible, to indicate the manner in which, it appears to me, the difference between her and Nicaragua may be amicably arranged.

The first observation here to make is, that I am prepared to enter into an engagement in the name of my government that all the questions should be settled by the arbitration of the United States and Great Britain; it being understood that if they (the said powers) differ in any point, that difference should be decided by reference to a third power on whom they should mutually agree. Spain, from the affinity which still exists between the people of Central America and the country from which they take their origin, is the state which appears to me would, in case of a necessity of any such a third arbiter, be chosen with most satisfaction to both the interested parties.

You may, however, further require from me what I think would be the most just and easy mode of settling by adjustment or compromise those questions on which it may be difficult to form any absolute decision. With regard to this point, having already called your attention to the fact that Nicaragua has not only assumed to herself the sole right of navigating the river San Juan, but has actually granted that and other rights appertaining thereto to a company, without any consultation with, or benefit conferred upon, Costa Rica, I should suggest, in order not to interfere with the great work at present contemplated, that Costa Rica should consent to the grant that has been

made by the State of Nicaragua, without deriving any benefit whatsoever therefrom, (it being always understood that she retains the right of transit upon the same river,) in consideration of some equivalent. The first and most natural thing to conceive is that which, in reality, offers no point of dispute, namely : the territory to the south of the port of San Juan, which I think I can without hesitation assert is already indubitably the right of Costa Rica.

The second would be the abandonment of Nicaragua of her claim over the territory of Guanacaste. If, however, it were found more convenient for the general settlement that the town now called Greytown, and occupied by the Mosquito people under the protectorate of Great Britain, should be ceded to the government of Costa Rica, together with a certain territory adjoining thereto, in virtue of some concession made by Costa Rica with regard to a portion of the territory of Guanacaste, lying on the lake and on the river San Juan, Costa Rica would accept this arrangement, though she would do so to her disadvantage, inasmuch as she could derive no particular benefit from it, for the following reasons : 1st. Possessing as she does a legitimate right to the southern side of the harbor, the acquisition of the northern side is not an object of vital importance to her. 2d. If, after resigning her share in the profits of the inter-oceanic route, which is in itself a consideration of immense value, Costa Rica is to give besides a portion of Guanacaste, she would have then given more than she receives. 3d. The lands of Guanacaste are of a far greater value to Costa Rica than the territory on the northern side of Port San Juan, because the former are bordering on the towns and cattle estates of the republic. 4th. By the dismemberment of a portion of Guanacaste, Costa Rica would lose a part of that natural and well-defined line of boundaries which she is intent on maintaining, and which has been of the greatest consequence since the two countries (Costa Rica and Nicaragua) became separate nationalities.

This last suggestion brings me to a point which is now of much importance, and on which you have requested my opinion, to wit : "In what manner the question as to the occupation of Greytown, if the Mosquito government is withdrawn therefrom, can be arranged." One mode of disposing of this matter is that which I have just alluded to. Another would be that of placing the port of San Juan under the joint rule of the five republics of Central America ; in which case, Costa Rica would cede a certain extent of territory on her side of the harbor, in favor of such a union. This plan offers the advantage of affording a common object to the alliance of those republics among themselves.

A third manner would be, that, if Nicaragua could in any way obtain from Great Britain the transmission of Greytown to herself, and from Costa Rica the cession of all those profits that the latter might be entitled to derive from the company to which Nicaragua has granted the navigation of the San Juan, the State of Nicaragua should abandon her pretensions to any of the territories claimed by Costa Rica, recognising at the same time, purely and simply, our whole line of frontier, and our right of transit over the waters of the river San Juan and up Lake Nicaragua. As this, however, involves the consent of Great

Britain, which it may be difficult to obtain, I can only speak of it as an arrangement which would be received with satisfaction by my country.

Before concluding these remarks, I should wish to draw your attention to a subject bearing on the preceding questions, and especially connected with the general happiness and prosperity of Central America, namely, "the expediency of devising some mode, either by mediation on the part of the two friendly governments of Great Britain and the United States, or by the construction of some board of arbitration, formed by the different States of Central America themselves, for the peaceful adjustment of all subjects of litigation which may give rise to unnecessary wars between them."

I add a short memorandum as to what I know of the Mosquito coast from the period of its discovery to the present time.

I take this opportunity to renew to you the assurances of my highest consideration and deep respect, and have the honor to remain, sir,

Your most obedient, humble servant,

F. MOLINA.

Hon. DANIEL WEBSTER,
Secretary of State.

Memorandum on the Mosquito Coast.

The lands on the northern side of the river San Juan, from their discovery by the Spaniards to the present date, have always been unoccupied. There lies Mosquitia, called by the Spaniards Tologalpa, (see Juarros,) which during the colonial period was considered as a province, or rather a territory, of the government of Nicaragua. It is a curious fact that the Mosquito coast was included in the charters granted by the Spanish monarchs to the first settlers of Costa Rica. The principal attempt made by the Spaniards to colonize that territory was the foundation of the city of Jaen, about thirty leagues north of the river San Juan, which took place nearly two centuries ago; but that city was not a long time in existence. I believe they never tried to form any establishments on the seacoast, but in several instances they undertook, although unsuccessfully, the civilization of those Indian tribes bordering on the settled portions of Honduras and Nicaragua.

The insalubriousness of the climate, the scanty numbers of the aborigines, and the depredations of pirates, were a constant check to the civilization of that territory. It is next to impossible to colonize such countries, without finding on the spot the assistance of plenty native labor, or undertaking the importation of Africans or some other dark race from elsewhere.

The river San Juan was known to the Spaniards from a very early date, but they only erected two military settlements on its banks, namely: the fort of San Carlos, at the place where the river starts from the lake, and another fort twelve leagues below, built at the end of the seventeenth century, on the southern bank, which was then

called "Castillo de la Concepcion," and at present is known by the name of "Castillo Viejo," on account of its having been abandoned and fallen to ruins since the beginning of this century.

Besides those forts, military guards used to be posted in times of war all along the river, as far as its entrance into the Atlantic.

It was not until after the independence in 1824, when the federation of Central America having been organized, a custom-house was established at the port of San Juan, and a small garrison was placed there, and a few people began to collect under the influence of those establishments.

The federal rule lasted from 1824 to 1838, when the Nicaraguans took possession of the port and held the same until 1848. As the independence was achieved throughout Central America without any struggle, and as there did not exist at that time any royalist garrison at the port, neither the Nicaraguans nor anybody else had to make the least exertion in order to extend to the port the effects of the political change or revolution. That was a natural consequence of our general peaceful movement for the emancipation—a movement which met with no resistance on the part of the Spanish officers. There never existed at San Juan any curacy or ecclesiastical administration; the population has never been so great as it has become after the occupation of the place by the Mosquito authorities.

If England could be prevailed upon to transmit the protectorate of the Mosquito Indians to the joint management of the five Central American republics, under such conditions as she might think proper to stipulate for the benefit of the Indians, I conceive that this would be the most satisfactory solution of the present difficulties.

It is an undeniable fact, if we consult the international treaties between England and Spain, and Spanish historians, that the English government has for centuries back exercised a certain kind of interference in the affairs of the Mosquito coast. Although the population of that territory is very small—not exceeding, perhaps, upwards of five or six thousand souls, including pure Indians and people of African descent—they are entitled to consideration, and have the right of living in a separate community; but I presume that if Great Britain saw the possibility of securing the welfare of the Mosquito people by organizing an efficient union in Central America, she would have no objection to transfer the protectorate to the Central American republics.

The realization of this scheme would indeed require that the United States and Great Britain should interpose efficaciously their combined mediation, in order to put a stop to all the existing difficulties amongst the Central American governments. It would suffice, in my opinion, that the high mediating powers should manifest their philanthropic views on the subject.

F. MOLINA.

WASHINGTON, *June 21, 1851.*

[Translation.]

Mr. Marcoleta to Mr. Webster.

[CONFIDENTIAL.]

NEW YORK, October 30, 1851.

The ministers of Nicaragua and Costa Rica being convinced that the actual state of the questions pending between their respective governments is a source of immense evil and injury to their mutual interests and to the perfect development of the political and commercial relations of both, and being desirous, therefore, to put an end to these evils, and to facilitate, on their own part, a complete and final settlement of the business pending with the British government, have agreed to meet and to devise the most suitable means for realizing the patriotic object which they have proposed to themselves.

With this purpose in view, Señor Molina, owing to the relations and compromises which bind Costa Rica to the government of her Britannic Majesty, has written to the English chargé d'affaires at Washington on the subject; and the minister of Nicaragua, trusting in the good wishes which actuate the government of the American Union, has the honor of addressing himself to the Hon. Daniel Webster, Secretary of State, to whom he submits the matter, entreating him, at the same time, that he will be pleased to interpose his beneficial influence, and to aid in bringing about the consummation of an object which is destined to be so fruitful of advantageous results to all.

The minister of Nicaragua is of opinion that, if Costa Rica will abandon her pretensions to the territory situated on the right bank of the river San Juan, Nicaragua would, on her own part, relinquish the district called *de Nicoya* or *Guanacaste*, and the two governments might make mutual concessions to each other in regard to the free navigation of their own waters in the interior; agreeing, moreover, to conclude, subsequently to these arrangements, a treaty of friendship and commerce, which should guaranty the respective rights and interests of the parties in perpetuity.

The minister of Nicaragua has, therefore, the honor of submitting this matter to the enlightened consideration of the Hon. Daniel Webster, hoping that he will be pleased to favor these negotiations, in order that they may be brought to a speedy issue; and he begs to inform the Secretary of State, at the same time, that the ministers of Costa Rica and Nicaragua are ready to repair forthwith to Washington, if the Hon. Daniel Webster should deem their presence there necessary to carry out the end proposed.

In begging the Secretary of State to have the kindness to return a speedy reply to this communication, the undersigned avails himself of this occasion to tender him the expressions and assurance of his distinguished consideration.

J. DE MARCOLETA.

Hon. DANIEL WEBSTER,
Secretary of State.

Mr. Webster to Mr. Marcoleta.

DEPARTMENT OF STATE,
Washington, November 11, 1851.

The Secretary of State of the United States has received the note of Mr. Marcoleta, of the 30th ultimo, marked "confidential." He can appreciate and sympathize with the anxiety of that gentleman, and that of Mr. Molina, for the adjustment of the differences between Nicaragua and Costa Rica. This government strongly desires that they should be accommodated upon terms just to both parties, and upon a basis likely to be enduring. Without adverting to the nature or extent of the obstacles which have hitherto prevented that accommodation, it would seem to the undersigned that the condition of public affairs in Central America, and especially in Nicaragua, has, within a few months, become, and remains such, so far as this department is informed, that it is extremely doubtful whether any good or lasting results could at present be expected from the negotiations proposed by Mr. Marcoleta. It is probable that some of the despatches of the chargé d'affaires of the United States in Nicaragua to this department have miscarried. It is certain, however, that at the latest dates from him, he had not been received by the authorities at Leon in his official character. One cause for this may have been, that a treaty is understood to have been concluded between Nicaragua, Honduras, and San Salvador, providing for a confederacy between those States, with the title of "National Representation of Central America." But neither Mr. Marcoleta, nor any other person, has presented credentials to this government as the agent of that confederacy; and this department is not aware that the confederacy is actually in operation. If, however, such should be the fact, it will at once occur to Mr. Marcoleta that any step which he might take, as the diplomatic representative of Nicaragua only, would neither be binding upon her, nor respectful to her confederates, so long as she acknowledged the validity of the compact which unites them.

The undersigned avails himself of this occasion to offer to Mr. Marcoleta renewed assurances of his very distinguished consideration.

DANIEL WEBSTER.

To Señor Don JOSE DE MARCOLETA, &c., &c., &c.

No. 9.

Mr. Webster to Mr. Kerr.

[Extract.]

DEPARTMENT OF STATE,
Washington, November 20, 1851.

SIR: Your despatches Nos. 3 and 4 have been received. As those numbered one and two have not reached the department, we have not been able correctly to understand the position of the contending

parties in Nicaragua. You will, accordingly, at your earliest convenience, transmit duplicates of them.

Mr. J. L. White, the agent of the Atlantic-Pacific Ship Canal Company, has recently visited this city, and from the oral representations which he has made, the department is inclined to believe that the modifications of the charter company which he recently obtained in Nicaragua were granted by competent authority, and upon just considerations. The large expenditures of money which the company had already made, and the magnitude of the interests, both public and private, at stake, seem to have admitted of no delay in seeking and obtaining those modifications. If, therefore, their lawfulness should be disputed, you will state the opinion of this government upon the subject.

The transit by steamboats upon the river San Juan, across Lake Nicaragua, and thence to San Juan del Sur, may fairly be considered as preliminary to the construction of the ship-canal, and perhaps as indispensable to show the most eligible route therefor. Nicaragua will probably derive more immediate advantages from this transit than if the canal were to be begun at once without it; and as she has justly considered her future prosperity to be identified with the construction of the canal, it is to be hoped that the transit, in the manner above mentioned, will receive all reasonable encouragement and all necessary protection.

* * * * *

I am, sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

J. BOZMAN KERR, Esq., &c., &c., &c..

Mr. Molina to Mr. Webster.

NEW YORK, November 20, 1851.

The undersigned, minister plenipotentiary of Costa Rica, begs leave to lay before the honorable Secretary of State of the United States the enclosed copy of a communication that he addresses under this same date to Mr. John L. White, agent of the Atlantic-Pacific Ship Canal Company, protesting against the occupation contemplated by that company, of certain lands belonging to Costa Rica.

Mr. Molina ventures to request the kind attention of the honorable Secretary to the subject in question, as he conceives that the proceedings of the company are in direct contradiction to the rights of Costa Rica, and to the spirit of the ship-canal convention concluded between the United States and Great Britain; and at the same time evidently injurious to the course of the negotiations opened for the settlement of all differences in regard to those territories.

The undersigned takes this opportunity to renew to the honorable Secretary of State the assurances of his highest consideration.

F. MOLINA.

Hon. DANIEL WEBSTER,

Secretary of State of the United States, Washington.

NEW YORK, November 20, 1851.

SIR: With reference to the statement you made to me, a few days ago, saying that the association to which you belong was preparing to occupy certain portions of land situated on the southern bank of the river San Juan, in virtue of the contracts that your company has concluded with the government of the State of Nicaragua, I now think it my duty to address you this present, for the purpose of informing you by writing, as I have already done in a verbal manner at our last interview, "that such an occupation involves a direct violation of the right appertaining to the republic of Costa Rica, who is the only legitimate owner of all the territories lying on the southern side of the San Juan river, along its whole course; and that in consequence of this just claim, the republic of Costa Rica has protested before the world, and again protests through my instrumentality, against the validity of the grants that the State of Nicaragua has unduly assumed the power to make to the Atlantic-Pacific Ship Canal Company, and that she will not allow establishments of any kind to be formed on the above-mentioned bank, unless her own consent be previously obtained."

The company is aware that the question respecting the sovereignty of the aforesaid territory between the republic of Costa Rica and the State of Nicaragua has been the subject of negotiations, opened under the mediation of the governments of the United States and Great Britain; and the company is also aware that those negotiations are still pending. In such circumstances, it seems necessary that the company should refrain from every proceeding which might change the present condition of the interests at issue between the parties maintaining contradictory claims to the same.

The circumspection that has presided over all the acts of the republic of Costa Rica in this affair, the regard she has had for the State of Nicaragua, and the friendly dispositions she entertains respecting the Atlantic-Pacific Ship Canal Company, are, in my impression, circumstances which entitle her to expect from others all due considerations, and that her rights shall not be trampled upon in a violent way.

If, on one hand, the government of Costa Rica, listening to reasons of an elevated order, thought fit to suspend the course of the contracts that had been concluded in its name, and were afterwards duly ratified, both for the purpose of cutting a ship-canal and for the establishment *ad interim* of a transit route by the best possible means—contracts which it would be easy, even at this late hour, to carry out, either with European or American speculators—on the other hand, it is not to be presumed that the republic, in any plan of settlement whatever, may be disposed to recognise the grants of land made by Nicaragua; although she would perhaps be willing to give to the people of that State other proofs of fraternity and regard.

This declaration will not preclude, that on the application of the company, and the government of Costa Rica finding it expedient, some lots of land of small extent may be granted to the company on the bank of the river for the building of depots, wharves, and stations,

according to the agreement which might be entered into to that effect.

You will, therefore, perceive that the present protest has not been dictated by a spirit of hostility to the company, it being only a measure of self-defence and self-preservation, which duty ordains to me, and to which I expect due attention will be paid, so as to preclude the necessity of other steps.

It will not be superfluous to inform you that, under this same date, I send copies of this letter to the Secretary of State of the United States, and to the representatives in this country of Great Britain and of the State of Nicaragua.

I take this opportunity to offer to you the assurances of my high consideration; remaining, sir, your obedient, humble servant,

F. MOLINA.

True copy :

F. MOLINA.

Mr. Webster to Mr. Molina.

DEPARTMENT OF STATE,
Washington, November 25, 1851.

The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of Mr. Molina, envoy extraordinary and minister plenipotentiary of the republic of Costa Rica, of the 20th instant, accompanied by a copy of a communication of the same date addressed by Mr. Molina to Mr. J. L. White, the agent of the Atlantic-Pacific Ship-Canal Company, protesting against the contemplated occupation by that company of certain lands claimed by Costa Rica.

The undersigned avails himself of this occasion to offer to Mr. Molina a renewed assurance of his very high consideration.

DANIEL WEBSTER.

Señor Don FELIPE MOLINA, &c., &c., &c.

Mr. Marcoleta to Mr. Webster.

[Translation.]

WASHINGTON, December 5, 1851.

The undersigned, envoy extraordinary and minister plenipotentiary of Nicaragua, has seen with pain and astonishment the protest which the legation of Costa Rica has addressed to the government of the American Union, to the chargé d'affaires of her Britannic Majesty in Washington, and to the maritime Atlantic-Pacific Canal Company, in consequence of having learned from the agent of said company that the latter was making preparations for occupying and colonizing the lands which had been granted to it by the government of Nicaragua,

on the right borders of the river San Juan, in virtue of the 27th article of the contract concluded on the 27th of August, 1849.

The undersigned, without entering fully into the merits of this question at present, and without reproducing in this place the various arguments and reasons which have already been advanced in support and justification of the sovereignty of Nicaragua over the right banks of the river *San Juan*, and the right which consequently belongs to said Nicaragua to dispose of those lands, finds himself under the necessity of protesting in the face of the world, as he does, in fact, hereby protest, against the pretensions of Costa Rica, which are not only fraught with detriment and injury to the rights and sovereignty of Nicaragua, but which are even at variance with established precedents.

The undersigned declares, moreover, in the name of his government, that the latter will not allow nor tolerate the least damage or curtailment of its well-established rights, and that it is, and always will be, ready to maintain them at all hazards, costs, and perils.

The undersigned avails himself of this opportunity to renew to the Secretary of State the assurance of his most distinguished consideration.

J. DE MARCOLETA.

Hon. DANIEL WEBSTER,
Secretary of State.

[Translation.]

Mr. Marcoleta to Mr. Webster.

WASHINGTON, *March 5, 1852.*

The undersigned has the honor of enclosing to the Hon. Daniel Webster, Secretary of State of the American Union, a copy of the reply of Lord Granville, her Britannic Majesty's secretary for foreign affairs, to the note which was addressed to him by this legation, on the 17th of last January, asking for the intervention of her Majesty's government, with a view of putting a stop to the sale of lands, which was lately carried on in the port of San Juan, and within the territory comprised between the latter port and what are called the rapids of Machuca.

It seeming likely that the negotiations which were suspended in July last may be resumed in Washington before long, it will not be deemed inopportune that the undersigned should submit some remarks to the consideration of the honorable Secretary of State of the American Union, which are sufficiently connected with the note of the 17th of January, which the undersigned had the honor of communicating to the cabinet of Washington.

Before all, it does not appear to the undersigned that the British government has understood the real meaning of that communication, in which, abstaining entirely from every kind of territorial claim, the

undersigned confined himself to simply pointing out to the British government the irregularity of the proceedings on the part of the English (*not Mosquito*) authorities of the port of San Juan, who had commenced emancipating and selling certain lands, which the pending negotiations would appear to show, "in a political sense," that they do not belong either definitively or legally to any of the parties interested, inasmuch as this point of dominion, sovereignty, and jurisdiction has been left as depending upon the results of the aforesaid negotiations.

The undersigned, in making known to the cabinet of St. James the wishes of the government of Nicaragua to maintain the most friendly relations with the British government, appealed to the English government to interfere in preventing certain measures and acts which were in direct opposition to established usages on similar occasions—acts which would, without the least doubt, tend to complicate more and more those negotiations which it was now desired to simplify, by throwing obstacles in the way of a just solution of the same.

In his note of the 17th of January last, the undersigned abstained from claiming any jurisdiction or right whatever, such claims having already been put forward in the various communications which had been addressed to the British government to that effect on different occasions.

If the sales in question had even been confined to the lands contiguous to the port of San Juan, the new declaration contained in Lord Granville's note of the 13th of last February might have some show of foundation. Far from this, said sales have been carried on, over a considerable extent of territory, about which there had existed no controversy, nor reclamation of any kind, on the part of the British government, in favor of the pretended king of Mosquitos; so much so, that a simple note of Mr. Chatfield, chargé d'affaires and consul general of her Britannic Majesty in Central America, alienated from the States of Nicaragua and Honduras a great portion of their respective territories. This arbitrary act, of which the undersigned had the honor of informing in due season the honorable Secretary of State of the American Union, was consummated without the intervention of the respective governments of Nicaragua and Honduras, without the latter being summoned or consulted, or allowed time to prove their legitimate rights, and especially against the text and meaning of the treaty concluded between the United States and Great Britain, on the 19th of April, 1850, (article 1st,) which was ratified shortly after by the two high contracting parties.

It is impossible, therefore, to deny to Nicaragua the only efficacious resource which belongs to the weak when they are contending with the powerful, without paving the way for consequences which would be pernicious in themselves and offensive to the law of nations; it were to say that force alone regulates the political, mercantile, and territorial transactions of nations between themselves, when, on the contrary, reason requires that all should be governed by a due application of the principles of equal justice.

The undersigned begs the honorable Daniel Webster to be fully convinced that, in submitting the foregoing explanations, he has only

followed literally the instructions of his government, which is far from being actuated by any feeling of hostility towards those nations with which it finds itself happily on terms of reciprocal friendship and good will ; and that so far from wishing to weaken those relations, it desires, on the contrary, to strengthen them more and more for the mutual advantage of all, without surrendering, however, those sacred rights and obligations in which it finds itself constituted.

The undersigned avails himself of this opportunity to renew to the honorable Secretary of State the assurance of his distinguished consideration.

J. DE MARCOLETA.

Hon. DANIEL WEBSTER,
Secretary of State, &c., &c.

FOREIGN OFFICE,
February 13, 1852.

The undersigned, her Majesty's principal secretary of state for foreign affairs, has had the honor to receive the note which Monsieur de Marcoleta, envoy extraordinary and minister plenipotentiary from the republic of Nicaragua, addressed to him on the 17th ultimo from Washington, on the subject of certain facts which are alleged by Monsieur de Marcoleta to have taken place at the port of Greytown, and which he represents as of a nature to complicate the negotiations respecting that port and district which are pending between Great Britain, the United States, and the republics of Nicaragua and Costa Rica.

The undersigned has the honor to inform Monsieur de Marcoleta that Mr. Crampton, her Majesty's envoy extraordinary and minister plenipotentiary at Washington, has been instructed by her Majesty's government to conduct the negotiations at Washington respecting Greytown and the Mosquito territory, which have been so long interrupted by the want of instructions from the government of Nicaragua to their representative at Washington ; and the undersigned requests, therefore, that Monsieur de Marcoleta will put himself in communication with Mr. Crampton on all points connected with those negotiations.

The undersigned has, however, to observe to Monsieur Marcoleta that her Majesty's government cannot admit the claim which he has put forward to interfere with the sale of any part of a territory over which her Majesty's government have always denied, and still deny, that Nicaragua has any jurisdiction.

In thus recording their continued rejection of the rights which the Nicaraguan government asserts over the Mosquito territory, the undersigned wishes at the same time to state that her Majesty's government earnestly desire to maintain the most friendly relations with the government of Nicaragua, and they trust that means will be found in the course of negotiations which, it is to be hoped, will speedily be re-opened at Washington, for settling in a manner equally fair and

honorable to both parties the points of difference which still unhappily subsist between Great Britain and Nicaragua.

The undersigned requests Monsieur de Marcoleta to accept the assurance of his highest consideration.

GRANVILLE.

Monsieur DE MARCOLETA, &c., &c., &c.

Mr. Molina to Mr. Webster.

[Confidential.]

WASHINGTON, April 6, 1852.

DEAR SIR: With reference to what you had the kindness to mention to me yesterday, as to the desire of the ship-canal company of having secured to it by the treaty in contemplation two sections of land on the Costa Rica side of the river San Juan, I beg leave to observe, that having communicated to my government, from the month of July last, the terms then recommended by your own good self and Sir Henry Bulwer for the settlement of the pending questions between Nicaragua and Costa Rica, and no proposition of the kind having been, at or since that time, entertained, I hardly think myself at liberty to take any resolution on the subject without receiving new instructions.

In these circumstances, I would feel extremely grateful to you if you were to allow me some time, in order to refer to my government.

I hope you will do me the justice to believe that it is a matter of deep regret for me to meet with this unexpected difficulty to the realization of an adjustment which has been the object of my life for the last four years, and in the negotiation of which I flatter myself I have given many proofs of the self-sacrificing spirit of the country I represent. And you may easily conceive that it is with great reluctance and pain that I shall, if I must do so, renounce the honor of being a party to the negotiation.

I beg to renew the assurance of my consideration and deep regard, with which I have the honor to remain, dear sir, your humble servant,

F. MOLINA.

HON. DANIEL WEBSTER,

Secretary of State of the United States.

Mr. Webster to Mr. Molina.

DEPARTMENT OF STATE,

Washington, April 8, 1852.

DEAR SIR: I have received your note of the 6th instant, marked "confidential."

The President will be exceedingly unwilling to be obliged to conclude the pending arrangement without the co-operation and consent of Costa Rica. But time presses, and it is necessary to bring this

business to an end. Nicaragua granted the sections of land to the canal company, to be located on either side of the San Juan. If she now consents to surrender all the territory on the south side of that river to Costa Rica, it seems quite reasonable that an arrangement should be made between the two governments, such as shall meet the convenience and fulfil the just expectations of the canal company.

It is most earnestly to be desired that, upon further consideration, you should devise a plan by which we can get over the present difficulty without the delay which would necessarily be incurred by waiting for further instructions. I commend this subject with renewed earnestness to your attention.

I offer you a renewed assurance of my very high consideration.

DANIEL WEBSTER.

Señor Don FELIPE MOLINA, &c., &c., &c.

Mr. Molina to Mr. Webster.

WASHINGTON, April 9, 1852.

SIR: I had the honor to receive your communication of yesterday, and in reply to it I beg to say, that as an earnest of my desire to co-operate with you in the accomplishment of the benevolent and elevated design of your government, I will assume the responsibility of agreeing to the stipulation that two out of the eight sections of land granted by Nicaragua to the canal company shall be situated on the Costa Rican side of the river San Juan, provided that an indemnity be paid to Costa Rica; that the company shall not select those two sections within ten miles from the entrance of the River Colorado into the sea, or the junction of the Serapiqui river and the San Juan river; and that Costa Rica shall retain her sovereignty in regard to the two above-mentioned sections of land thus selected.

The indemnity seems to me necessary in order to make the contemplated convention acceptable to the Costa Rican people, who have made up their minds, long ago, to abandon certain rights to the Nicaraguans on those very important and essential points contemplated in the treaty, but are not prepared to yield this comparatively small and insignificant matter. Were I to give my unconditional assent to it, they would be apt to regard the treaty no longer as an act of their own free will and wise deliberate moderation, but as a constraint put upon them.

I beg, therefore, to propose the sum of \$100,000 as an indemnity, to be paid by Nicaragua to Costa Rica out of the revenues that the former is to receive from the company. The payments to be effected in four, five, or more, yearly instalments, as you may think proper. This sum will not appear exorbitant when it is taken into account that Nicaragua is likely to receive from the company about \$100,000 every year, before the canal is completed, and that after the completion of the said work that amount will, perhaps, be increased to millions. One-half of those profits belong, of right, to Costa Rica, but will be entirely surrendered by the treaty. The proposed indemnity would be

a consideration for both the two sections in question, and for the cession of the delta comprised between the northern branch and the Colorado branch of the river San Juan, a cession not spoken of in the preliminaries of July last, but which I did not hesitate to assent to with a view to remove all further difficulties.

Having thus candidly submitted my views on this subject, and hoping that you will be pleased to take them, at your earliest convenience, into consideration, I have the honor to remain, with the highest regard and deep respect, sir, your obedient, humble servant,

F. MOLINA.

HON. DANIEL WEBSTER,
Secretary of State of the United States.

Mr. Webster to Mr. Molina.

DEPARTMENT OF STATE,
Washington, April 15, 1852.

SIR: I have the honor to acknowledge the receipt of your note of the 9th instant, in which you agree to stipulate, on behalf of your government, to allow the Atlantic-Pacific Ship Canal Company to locate two of the sections of land granted to them by the Nicaraguan government on the Costa Rican side of the San Juan river, in consideration of one hundred thousand dollars to be paid by Nicaragua to Costa Rica out of the revenues to be received by the former from that company. Your offer is also made subject to other conditions.

It is to be regretted that the expectations of your government should be so high in regard to its differences with the Nicaraguan government. I had indulged the hope that the proposition contained in my note of the 8th instant would, under the circumstances, have been considered by you so moderate and reasonable that you would not, by rejecting it, lose the opportunity which it afforded Costa Rica to avail herself of the good offices of the United States and Great Britain towards accommodating the disputes between her and Nicaragua. Inasmuch, however, as you have otherwise decided, Mr. Crampton and myself will proceed to arrange the points at issue between our two governments in regard to the Mosquito shore, and to transmit directly to the Nicaraguan government, whose diplomatic agent here it is understood still remains without instructions, information of these arrangements, with a distinct statement of our joint opinions of the interests and duty of that government. As you are the recognised minister of Costa Rica to this government, it would be improper for us to address ourselves directly to that of Costa Rica, as such a proceeding would be a departure from diplomatic usage. I have to say, however, that a copy of the paper which we propose to communicate to the Nicaraguan government will be placed in your hands.

I avail myself of this occasion, sir, to offer to you a renewed assurance of my very distinguished consideration.

DANIEL WEBSTER.

Señor DON FELIPE MOLINA, &c., &c., &c.

Mr. Molina to Mr. Webster.

WASHINGTON, *April 19, 1852.*

SIR: I had the honor of receiving your letter of the 15th instant, in which you have the goodness to express a regret that the expectations of my government, as set down in my note of the 9th, should be so high; and that, consequently, you will proceed to arrange with Mr. Crampton the points at issue between the United States and Great Britain in regard to the Mosquito shore, and to forward to the Nicaraguan government a distinct statement of your joint opinions respecting the interests and duty of that government. And you further mention the intention of transmitting to me a copy of the paper that is to be addressed to the Nicaraguan government, for the information of that of Costa Rica.

In reply, I think it my duty to assure you that my government will be prepared to receive, with due respect and grateful acknowledgment, any suggestions proceeding from such exalted sources. But, at the same time, I cannot refrain from lamenting my misfortune in having failed to impress this government with my own convictions in regard to the extent of the rights of Costa Rica, as no opportunity has been offered for the full and mature discussion of those rights; in which case, I am led to think that the moderation and self-denial of the party I represent would have been better appreciated.

As the matter now stands, I would only venture to suggest that, instead of stipulating a fixed amount of money, a provision might be inserted in the treaty or paper to be drawn, to the effect that the State of Nicaragua should give to Costa Rica an indemnity for the two sections of land wanted by the company, and for the territory comprised between the Colorado branch and the northernmost branch of the river San Juan. This indemnity to be regulated by mutual agreement of the parties concerned, or through the arbitration of one of the other three Central American governments that should be chosen by lot.

This solution of the only difficulty remaining offers the advantage that it would not interfere with the immediate execution of the other arrangements contained in the treaty.

Requesting again your earnest attention on the subject, I have the honor to remain, with the highest consideration and deep respect, sir, your most obedient, humble servant,

F. MOLINA.

Hon. DANIEL WEBSTER,

Secretary of State of the United States.

[Translation.]

Mr. Marcoleta to Mr. Webster.

WASHINGTON, April 21, 1852.

MR. SECRETARY OF STATE: All hope, for the present, being lost of reconciling the opinions and harmonizing the interests of the three States of Central America, for the establishment of the proposed confederation of said States, Nicaragua, one of them, could not view with indifference the neglect and the too long protracted suffering which her foreign relations experienced at the very time when it was necessary to act with the greatest activity, and to give an energetic impulse to the pending question.

Thus it is that, without renouncing any ulterior project of uniting the States under one common form of government, Nicaragua, inspired by an instinctive feeling of self-preservation, and despairing of arriving at any definite result, has thought that she ought to separate and resume, with her independence and sovereignty, the direction and management of her foreign relations and affairs; not without a lively and keen regret at seeing her exertions rendered fruitless for the attainment of an object so natural and patriotic.

In consequence of a legislative decree, Nicaragua proceeded to receive, with the requisite formality, the worthy representatives of the American Union and of her Catholic Majesty, as well as the consular agent of the United States at the port of San Juan del Sur.

The undersigned, whose mission remained virtually and practically suspended while he did not possess from the proper authority the powers necessary to continue his mission, has consequently resumed his former official position, giving, by this step, the necessary weight and authority to the powers which were formerly conferred upon him by the government of Nicaragua.

Thus the undersigned does not perceive, at present, the least difficulty in his taking part in the conferences or preliminary arrangements respecting the bases which have to be established in relation to the port of San Juan and of the Mosquito coast, and he hopes to be invited to them, *claiming, as he does hereby claim*, the right, inasmuch as the negotiations concern directly and immediately the political, mercantile, and territorial interests of his government.

The undersigned does not lose sight of the difficulties which complicate these negotiations, nor of the opposition which exists among the different interests that are brought into question in their discussion, nor does he fail to acknowledge the advantage and propriety of determining questions which hold, so to speak, in suspense the settlement of important interests, with very great detriment to all parties.

In the opinion of the undersigned, the principal difficulty, and, at the same time, the easiest to remove, is the question of boundary between Nicaragua and Costa Rica—a question purely local, secondary, and foreign; one which ought to be treated only between the two governments interested in it; thus removing one of the principal, perhaps the most serious, obstacle which opposes the course, march,

and progress of the chief question, which could be of very easy solution without this serious impediment.

But, supposing that said complication exists, and that it exists through the unnecessary choice of some of the parties interested, without reason or justifiable cause; and supposing, also, that every day renders it more necessary to arrive at the desired termination: the undersigned, consulting on one hand the dignity of the respective governments, and considering the existing state of things, and knowing also the sentiments which animate the government of Nicaragua in favor of her sister State—for whose prosperity it entertains the most fervent wishes; for whose happiness and progress it feels and takes the most lively and profound interest—is of opinion that, without causing more delay, a final understanding should at once be sought; and, with this object, he has the honor to propose and submit to the enlightened decision of the honorable Secretary of State the enclosed *projet* of an arrangement, which being duly considered, steps may be taken immediately with a view to lay down the clauses and to give them a public, legal, and authentic consideration, which shall define and irrevocably fix the destiny of all the States in general, and of each one in particular.

The undersigned is fully convinced that the honorable Secretary of State will find in said *projet* the most convincing proof of the desire which animates the government of Nicaragua to consult the general good; he believes that said *projet* offers advantages and imposes equal sacrifices upon all parties; and he is persuaded that the means most likely to encompass the end in view is a mutual agreement to consent to mutual sacrifices. Nicaragua comes the first to submit the proof of this self-abnegation; and if the parties interested pursue the same course, there will be no difficulty in future in settling the various questions on whose solution depend the repose of the country and the development of common interests.

In the original plan there was imposed, almost by violence, upon Nicaragua, through the restoration of the port of San Juan, a series of sacrifices most detrimental to its dignity and interests; she was required to give an indemnity to the pretended Mosquito king, whom Nicaragua has never recognised, *nor is disposed* ever to recognise; she was required to establish boundaries with the notorious king of Mosquito, in a territory which she has always claimed as that which formed an integral part of her own dominions, to which she has abundant rights, and which rights Spain, a competent judge in this matter, has ultimately confirmed by a public treaty.

It was imposed upon her that she should yield to Costa Rica the district of Nicoya or Guanacaste on the Pacific coast, and on the Atlantic coast the right bank of the river San Juan, with the free navigation for sailing vessels on the waters of the river and the contiguous lake—all this with the greatest disregard of the recognised rights, and with well-known detriment to the dearest and most vital interests, of the government of Nicaragua.

In the original negotiation, and on the proposition of Sir Henry Bulwer, the minister of her Britannic Majesty, there was imposed and carried out a complete denial of the question of right; thus depriving

Nicaragua of the only safeguard and defence of her own rights, when, contrary to this determination, they admitted then, as they admit now, the rights which are claimed by Costa Rica, in order to contribute to the spoliation which was attempted to be imposed on Nicaragua.

It is not, then, possible to admit now this contradiction, without incurring the reproach of partiality and of flagrant injustice.

If Costa Rica desires the common good, if she wishes to exhibit fraternal feelings towards Nicaragua, there remains not the least doubt that she will agree to the *projet* which is here proposed; on the contrary, she will prove evidently that it is not the desire of common prosperity which she cherishes in her heart, but a selfish feeling, which the present generation and posterity will designate as that of ambition—accusing Costa Rica, with abundant reason, of being the favorer, the instigator, and promoter of fatal intestine discords, and the only obstacle that lies in the way of the well-being of two nations that have the same origin, like interests, and similarity in their religion, language, habits, and customs.

In respect to Great Britain, the government of Nicaragua entertains the firm conviction that that power is actuated by the most generous sentiments—sentiments and feelings worthy of her strength, her greatness, and her power; and that she will not sully her glory and her national pride by the recollection of past resentments, nor by humiliating, degrading, and ruining a weak State, whose only means of defence are no other than the conviction that she possesses in the rights that she believes belong to her, in the conscious rectitude of her motives, the natural desire of her own self-preservation, and the duty which devolves upon her to defend and watch over her most precious and dearest interests.

In respect to the United States of North America, Nicaragua appeals in the last place to the fraternal feelings which unite both countries, to the homogeneity of their political institutions, to the mutual sentiments which now reign in the hearts of their sons, respectively, founded on the one side, and more closely connected on the other, by the indissoluble bonds of a community of interests and relations.

Nicaragua, then, must trust and hope that so many and such close interests will not cease to have their influence on the minds of those now charged with the duty of directing the destinies of this great republic, and that they will contribute by their powerful support and influence to a reconciliation of the parties, by causing them to accept the means which Nicaragua offers as the expedient best adapted to terminate at once differences so serious, of such long standing, and so prejudicial to the interests of all.

Nicaragua comes forward to contribute, on her part, to the common stock of sacrifices and abnegation, and hopes confidently that her conduct will be imitated, chiefly by her sister State of Costa Rica.

Nicaragua trusts, likewise, in the magnanimity of sentiments and intentions of her Britannic Majesty, and in the sympathy and friendship of the American people.

On the bases contained in the enclosed *projet*, the undersigned can proceed to discuss and sign the proper stipulations, being almost able

to assure the honorable Secretary of State that his government will not hesitate to sanction them, as he can in the same way assure him that in the new instructions which have been requested, Nicaragua will not submit to the long catalogue of sacrifices which had before been required of her.

The undersigned embraces this occasion to renew to the honorable Secretary of State the assurances of his most distinguished consideration.

J. DE MARCOLETA.

HON. DANIEL WEBSTER,
Secretary of State.

[Translation.]

Project and means proposed by the legation of Nicaragua for a final settlement of the questions relating to the port of San Juan, the Mosquito coast, and the question of limits between Nicaragua and Costa Rica.

PORT OF SAN JUAN AND THE MOSQUITO COAST.

1. The port of San Juan del Norte shall be restored to Nicaragua, whose government accepts the limits lastly proposed by her Britannic Majesty's minister to the country and to the Mosquito coast, to wit: To the northward, from Cape *Gracias á Dios*, following the river Segovia, towards the interior, as far as the parallel eighty-four and a half of longitude, and from thence descending in a direct line by west until faces the south, to the cape of Punta Gorda, which they will reach by a horizontal line.

2. Nicaragua shall pay such indemnity as may be stipulated for the improvements introduced in the port of San Juan, from the 1st of January, 1848.

The aforesaid indemnity shall not be required to be paid at once, but little by little, and by degrees, according as the circumstances of the government of Nicaragua shall permit, which trusts in the sentiments of justice and moderation of the great powers interested in the matter, in order that said indemnity may be reduced to the lowest possible figure, in view of the peculiar position of Nicaragua, the deterioration of her revenues, and the internal convulsions which have unhappily occurred there, especially in latter times.

3. Great Britain and Nicaragua shall adjust a treaty of peace, friendship, and commerce, on the same terms as that discussed between the United States and Nicaragua, with the exception of some provisions, which shall determine to the judgment of the parties the particular and local circumstances of the two powers.

4. The United States of America and Great Britain guaranty the integrity of the territory of Nicaragua, especially that portion of it which is to be occupied by the canal or railway, if the latter should be established, and they shall protect the works on these routes of com-

munication ; guarantying, also, the neutrality of these important works.

5. Said powers shall also stipulate the number of maritime miles to which the aforesaid neutrality is to extend, at the two extremities of the canal or railway.

Question of limits between Nicaragua and Costa Rica.

1. Nicaragua shall yield, in perpetuity, to Costa Rica, the district of Nicoya or Guanacaste.

2. Costa Rica shall desist from her pretensions to the right bank of the river San Juan, which shall continue to form an integral part of the dominions of Nicaragua.

3. Nicaragua shall insure to Costa Rica the freedom and absolute immunity for the importation and exportation of her trade by the rivers San Juan and Sarapiquí.

4. Nicaragua shall cede to Costa Rica, if this government should request it, the land necessary for the construction of a wagon road, and for the erection of a custom-house and revenue stations.

5. Costa Rica shall make a formal renunciation of all sums or amounts which she may think herself entitled to claim from Nicaragua, whether said sum be the result of pecuniary advancements, or whether it proceed from any kind or species of supplies furnished.

6. Nicaragua and Costa Rica shall conclude a treaty of peace, amity, and commerce, in which there shall not only be stipulated the foregoing clauses, but even the free introduction, exportation, and transit in the respective territories of the produce of their soil, and articles manufactured on the same ; but articles manufactured in foreign countries, and the produce of foreign soil, shall be subject to the custom-house regulations of the two governments in regard to importation, exportation, and transit.

J. DE MARCOLETA,
The minister of Nicaragua.

[Extract.]

Mr. Webster to Mr. Walsh.

DEPARTMENT OF STATE,
Washington, April 29, 1852.

SIR : The disputes between the republics of Costa Rica and Nicaragua, and between the latter and the Mosquito Indians, in regard to the boundary between their respective territories, have threatened to be so serious an obstacle to the commencement of the inter-oceanic canal by the way of the San Juan river and Lake Nicaragua, that the governments of the United States and Great Britain have deemed themselves warranted in offering their good offices for the purpose of adjusting them. For this purpose Mr. Crampton, the British minister here,

and myself have drawn up and signed the paper, a copy of which you will herewith receive. This paper consists of a preamble setting forth the motives for the settlement of the disputes, seven articles of a basis for that settlement, and a conclusion adverting to the alternative which Great Britain and the United States will deem themselves justified in adopting, should their recommendation to Costa Rica and Nicaragua not be substantially adopted by them. Until recently, hopes were entertained that Mr. Molina, the minister of Costa Rica here, would have joined in the instrument. The accompanying copy of a correspondence between this department and him will, however, apprise you that, as he has been unwilling to permit the canal company to locate certain sections of land granted them by Nicaragua on the right bank of the San Juan river, it has been deemed advisable not to yield to him on this point, and we have signed the paper without him. A motive for this on my part was an apprehension that he might ultimately object to some of the terms in which the boundary between Costa Rica and Nicaragua is described. As it is presumed that his scruples were in obedience to instructions from his government, it is deemed expedient that a person on the part of this government should proceed to San José, the capital of Costa Rica, for the purpose of inducing that government to accede to the recommendation embodied in the paper adverted to. You have accordingly been selected for the occasion. A letter introducing you to the minister for foreign affairs of Costa Rica is herewith enclosed. On reaching San José, you will lose no time in presenting this, and in making known the object of your visit. For this purpose you will present to the minister the document executed by Mr. Crampton and myself, and will request that it may be taken into immediate consideration. In order that you may be prepared to meet any objections to its adoption by that government, it is proper that you should be apprized of the full extent of its claims in respect to Nicaragua. It is understood that Costa Rica asserts that her boundary begins at the mouth of the San Juan, at its conflux with the sea, and extends therein to its source in Lake Nicaragua, and thence to a point on that lake nearest the mouth of the river La Flor, on the Pacific; and thence by a direct line to the mouth of that river. Nicaragua, on the other hand, contends that Costa Rica has no right to claim the region on the south bank of the San Juan or the district of Guanacaste. From the attention which I have been able to bestow upon the subject, I incline to the opinion that the claim of Costa Rica to the south bank of the San Juan is good as far as the mouth of the Sarapiquí river, but that her pretensions to the Guanacaste district will not bear a strict and impartial investigation. By the proposition we make to her, therefore, she would apparently lose, in the first place, the delta between the San Juan and the Colorado. This, however, would only be an apparent loss, when it is considered that the Colorado may be deemed a branch of the San Juan, and, as it discharges a much larger volume of water than the branch which empties into the sea at Greytown, it may be said to be the main branch of the stream. When, also, it is considered that the delta referred to is uninhabitable and otherwise valueless, Costa Rica cannot justly be said to make any material sacri-

fice in adopting the Colorado as her boundary. It is not improbable that she has hitherto been influenced in her pretensions by a reluctance that Nicaragua should have exclusive control of the canal, and by an impression that, if the Costa Rican boundary were to extend to the south bank of the San Juan and were to embrace the Guanacaste district, she might have the canal within her jurisdiction, especially as the port of Salinas, on the Pacific, which has sometimes been spoken of as the best terminus for the work, would then be hers. The Atlantic and Pacific Ship Canal Company have, however, made a thorough survey of the region between Lake Nicaragua and the Pacific, and have ascertained that not only the most practicable, but the only practicable, course for the canal will be from a point on that lake, within the acknowledged territory of Nicaragua, to Brito on the Pacific, also in her territory. Inasmuch, therefore, as there cannot be two canals in that quarter, and as capitalists will prefer the cheapest and most eligible route, Costa Rica cannot, in any event, expect to have the canal within her territory. As it is probable, however, that the San Juan itself will, in a part of its course at least, be used as the canal, by means of locks and dams, it is indispensable that the canal company should have exclusive control over the waters of that river for the purposes of the canal. If, therefore, Costa Rica should acquire, by so good a title as the guaranty of the United States and Great Britain, the rich and extensive region of Guanacaste at so small apparent a sacrifice, it is difficult to imagine why her government could reasonably hesitate to adopt our recommendation.

But it may be asked, why should Nicaragua have the exclusive right to navigation by steam on the San Juan and the lake? To this it may be answered, that steam navigation was first introduced there under the auspices of Nicaragua, in the belief that she had exclusive jurisdiction over the river and lake; that the company, to whom she has granted the privilege, accepted it under this impression, and have invested a large capital in carrying their grant into effect. If Costa Rica should make a similar grant to another company, it would probably result in material loss, if not ruin, to that holding under Nicaragua, and indeed to both, and would ultimately lead to ceaseless bickering, and perhaps arrest all steamboat navigation in that quarter. The competition between the Nicaraguan route, to and from the Pacific, and those by the way of Panama and Tehuantepec, when the latter shall be open, will make it for the interest of the Nicaragua company so to reduce their rates for passage and freight that none of the usual objections to a monopoly can be urged against them.

If, however, the Costa Rican authorities should not acknowledge the reasonableness of the plan of accommodation proposed, and should persist in asserting all their pretension against Nicaragua, you will say to them that this will not prevent the United States from entering into a convention with Great Britain to protect both the transit and the ship-canal company. Should such a convention go into effect, it would, if necessary, be the right and duty of both parties to it to use other means than persuasion to induce Costa Rica to abstain from trenching on the privileges or interfering with the operations of either of those companies.

It is the President's wish, that if the proposition of which you are the bearer be acceptable to that government, their assent to it may be given in a formal manner by both the legislature and president of Costa Rica, so that no further reference to that country may be necessary. Mr. Molina might then be instructed and empowered to sign a quadripartite treaty, and might, at the same time, be furnished with a ratification of such a treaty, to be exchanged here for the ratifications of the other parties. It is highly desirable that that government should dispose of the subject, so that you may return hither in season to allow the treaty to be acted upon by the Senate of the United States at its present session.

You will proceed to San Juan de Nicaragua, and from thence up the San Juan river to its confluence with the Sarapiquí, and from thence to San José by land. When you shall have concluded your business at San José, you may return by the way of Nicaragua, in order that you may bring with you any despatches which Mr. Kerr, the chargé d'affaires of the United States to Nicaragua, may have occasion to send to the department.

I am, sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

ROBERT M. WALSH, Esq., &c., &c., &c.

Basis of a Convention for the settlement of the differences between Nicaragua and Costa Rica proposed by the United States and Great Britain.

WASHINGTON, April 30, 1852.

The undersigned, Daniel Webster, Secretary of State of the United States, and John F. Crampton, envoy extraordinary and minister plenipotentiary of her Britannic Majesty, having taken into consideration the state of the relations between the republics of Costa Rica and Nicaragua in respect to the boundaries between those republics, and between the republic of Nicaragua and the territory claimed by the Mosquito Indians, and being mutually desirous that all pending differences respecting those questions should be amicably, honorably, and definitely adjusted, do, in behalf of their respective governments, earnestly recommend to the respective governments of the republics of Nicaragua and Costa Rica an accommodation and settlement of these differences upon the following basis.

ARTICLE 1. The Mosquito Indians may reserve to themselves, out of the territory heretofore claimed or occupied by them on the eastern coast of Central America, a district of country, and the jurisdiction over the same, to be bounded as follows, namely: Beginning on the shore of the Caribbean sea at the mouth of the river Rama, which is (according to Bailey's map of Central America, published in London November, 1855) $11^{\circ} 34'$ north latitude and $83^{\circ} 46'$ west longitude; running thence due west to the meridian of $84^{\circ} 30'$ west longitude from Greenwich; thence due north on said meridian to the river Segovia Fantasma or Wauz; thence down said river to the Caribbean sea; thence southerly along the shore of said

sea to the place of beginning; and all the rest and remainder of the territory and lands lying southerly or westerly of said reservation heretofore occupied or claimed by the said Mosquitos, including Greytown, they shall relinquish and cede to the republic of Nicaragua, together with all jurisdiction over the same, in consideration of the net receipts for a period of three years of all duties levied and collected at Greytown, at the rate of ten per cent. ad valorem on all goods imported into the State; the period of three years to commence on the day when Nicaragua shall formally take possession of and enter into the occupancy of said town. And the said net receipts shall be payable quarterly, or every three months, to such agent or agents as may be appointed to receive them.

And the said republic of Nicaragua hereby agree not in any way to molest or interfere with the Mosquito Indians within the territory herein reserved by them.

It is also understood that any grant of land which may have been made by said Mosquitos since the 1st of January, 1848, in that part of the Mosquito territory hereby ceded to Nicaragua, shall not be disturbed, provided the said grant shall not interfere with other legal grants made previously to that date by Spain, by the Central American confederation, or by Nicaragua, or with the privileges or operations of the Atlantic Ship Canal Company or Accessory Transit Company, and shall not include territory desired by the Nicaraguan government for forts, arsenals or other public buildings.

ARTICLE 2. It is also understood that nothing in the preceding article shall preclude the conclusion of such voluntary compact and arrangement between the State of Nicaragua and the Mosquito Indians, by which the latter may be definitely incorporated and united with the State of Nicaragua; it being stipulated that, in such case, the said Mosquito Indians shall enjoy the same rights and be liable to the same duties as the other citizens of the said State of Nicaragua. The municipal and public authority in the town of Greytown shall be held and exercised by the government of Nicaragua, but said government shall lay no duties of tonnage nor any duties of impost on goods imported into Greytown, intended for transit across the isthmus, or for consumption in any other State than that of Nicaragua, except such tonnage duty as may be necessary for the preservation of the port and harbor and the erection and maintenance of necessary light-houses and beacons; and no duty for this or similar purposes shall exceed say twelve cents per ton on each vessel.

ARTICLE 3. The boundary between the republics of Nicaragua and Costa Rica shall begin on the south bank of the Colorado, at its confluence with the sea, at high-water mark on said river; thence along said south bank, also at high-water mark, to the confluence of the Colorado with the river San Juan; thence, at high-water mark, along the south bank of the San Juan to its source on Lake Nicaragua; thence, at high-water mark, along the south and west shore of that lake, to the point nearest the mouth of the river La Flor; thence by a direct line drawn from that point to the mouth of the said river in the Pacific ocean. It is understood, however, that Costa Rica retains the right, in common with Nicaragua, to navigate said rivers and lake by

sail vessels, barges, or vessels towed, but not by steam; but this right is in nowise to interfere with the paramount right in Nicaragua or her grantees to appropriate the waters of said rivers and lake to a ship-canal from ocean to ocean, or from the Caribbean sea to said lake. It is also understood that the company entitled the American Atlantic and Pacific Ship-Canal Company shall have the privilege of locating, on the south bank of the St. John river, four of the eight stations or sections of land referred to in the 27th article of the amended charter of said company, as ratified by the government of Nicaragua on the 11th April, 1850. If, however, the said company should desire to locate more than the said four sections on the south side of the San Juan, the governments of Nicaragua and Costa Rica will amicably agree in regard to the terms of such location.

ARTICLE 4. Neither the government of Nicaragua nor the government of Costa Rica shall be at liberty to erect, or suffer to be erected, any wharf, wall, embankment, or other structure, or to do, or suffer to be done, any act or thing whatever in the harbor of Greytown, in any part of the Colorado or San Juan rivers, or on the shore of Lake Nicaragua, which shall obstruct the free operations of the ship-canal or transit company, or hinder the passage of their boats in, along, and through the said harbor of Greytown and rivers Colorado or San Juan. And if, after a proper survey of the route for a ship-canal between the two oceans, it shall be found that it would be preferable for that canal to pass, in part, along the southern bank of the river San Juan or the Colorado river, the government of Costa Rica engages to grant any lands and to afford any facilities which may be necessary for the construction of the said canal.

ARTICLE 5. Whereas it is stipulated by the second article of the convention between Great Britain and the United States of America, concluded at Washington on the nineteenth day of April, 1850, that vessels of the United States or Great Britain traversing the said canal shall, in case of war between the contracting parties, be exempt from blockade, detention, or capture by either of the belligerents; and that that provision should extend to such a distance from the two ends of the said canal as might thereafter be found expedient to establish: now, for the purpose of establishing such distance, within which the vessels of either of said nations shall be exempt from blockade, detention, or capture by either of the belligerents, it is hereby declared that it shall extend to all waters within the distance of twenty-five nautical miles from the termination of said canal on the Pacific and on the Atlantic coasts.

ARTICLE 6. Whereas by the seventh article of the said convention it was among other things stipulated, that if any persons or company had already made, with any State through which the proposed ship-canal might pass, a contract for the construction of such a canal as that specified in said convention, to the stipulations of which contract neither of the contracting parties in that convention had any just cause to object; and the said persons or company had, moreover, made preparations and expended time, money, and trouble on the faith of such contract, it was thereby agreed that such persons or company should have a priority of claim over every other person,

persons, or company, to the protection of the governments of the United States and Great Britain, and should be allowed a year from the date of the exchange of ratifications of that convention for concluding their arrangements, and presenting evidence of sufficient capital subscribed to accomplish the contemplated undertaking; it being understood, that if at the expiration of the aforesaid period such persons or company should not be able to commence and carry out the proposed enterprise, then the governments of the United States and Great Britain should be free to afford their protection to any other persons or company that should be prepared to commence and proceed with the construction of the canal in question: and whereas, at the time of the signature of the said convention a company styled the American Atlantic and Pacific Ship-Canal Company, had, with the government of the republic of Nicaragua, a contract for constructing a ship-canal between the said oceans, but, for reasons deemed sufficient by the governments of Great Britain and the United States, have not hitherto been able to comply with the stipulation which gave them a claim to the protection of the said governments: and whereas no other company has claimed such protection on the same conditions, it is therefore agreed that the further time of one year from the exchange of the ratifications of this convention shall be allowed the said company to comply with the stipulation aforesaid.

ARTICLE 7. And whereas, by another charter of the 11th April, 1850, to the American Atlantic and Pacific Ship-Canal Company, the State of Nicaragua, with a view to facilitate the construction of that canal, has authorized the said company to separate from their contract of the 22d of September, 1849, the part relating to the navigation of the waters of Nicaragua by steam, under the title of the Accessory Transit Company: and whereas the said Accessory Transit Company has for some time past been in full and successful operation, the governments of Great Britain and of the United States hereby engage to extend their protection to the said Accessory Transit Company in the same manner and to the same extent as by the aforesaid convention of the 19th April, 1850, and by this convention, the said protection is extended to the Atlantic and Pacific Ship-Canal Company; but as the main object of the said convention between Great Britain and the United States of America was to provide for an inter-oceanic ship-canal between the Atlantic and Pacific, and as that object is still deemed paramount to every other mode of transit, the protection hereby extended to the Accessory Transit Company shall not be construed to interfere with the right to construct said canal by the company which has undertaken to construct the same, or, in case of their failure, by any other person or company which may be authorized to construct the same, and every grant and privilege conferred upon said Accessory Transit Company shall be subject to the paramount right and privilege of any other persons or company to construct, maintain, and use such canal. Finally, these propositions, so far as they respect the governments of Nicaragua and Costa Rica, are advisory and recommendatory, and the immediate attention of those governments to their consideration is earnestly invoked. To

insure a prompt decision, Mr. Wyke, consul general of her Britannic Majesty, clothed with full power for that purpose, Mr. Kerr, chargé d'affaires of the United States to Nicaragua, and Mr. R. M. Walsh, appointed special agent on the part of the United States to the government of Costa Rica, are authorized to communicate the arrangement proposed to those governments respectively ; and unless the aforesaid governments of Nicaragua and Costa Rica shall promptly and without unnecessary loss of time concur in the general basis of this arrangement, and adopt proper measures for carrying it into effect, then the governments of Great Britain and the United States will immediately, as between themselves, jointly adopt such measures as they shall deem advisable to carry into full execution the convention between those governments of the 19th April, 1850, and to accomplish the design therein contemplated of an inter-oceanic communication by canal from the Atlantic to the Pacific ocean by the way of the river San Juan and the Lake Nicaragua.

DANIEL WEBSTER.
JOHN F. CRAMPTON.

Mr. Webster to Mr. Kerr.

No. 11.

DEPARTMENT OF STATE,
Washington, April 30, 1852.

SIR : The adjustment of the unsettled questions between the United States, Great Britain, Costa Rica, and Nicaragua, in regard to the boundary between the two latter States, and between Nicaragua and the territory claimed by the Mosquito Indians, has for some time past been the subject of negotiations between Mr. Crampton, the British minister, Mr. Molina, the minister of Costa Rica, and myself. Mr. Marcoleta, the minister of Nicaragua, has not been invited or admitted to take part in them. This arose from the fact that at the time they were begun, and until they were nearly concluded, we were not informed that you had been received by the Nicaraguan government ; and when we were informed by Mr. Marcoleta's note of the 14th instant that you had been so received, there was no communication from him from which it could be inferred that his instructions would allow him to join in the negotiation upon any acceptable basis. Hopes were for some time entertained that Mr. Molina would unite with us in a basis deemed reasonable by us, and which we could recommend to those governments. You will see, however, from the accompanying correspondence between the department and him, that these hopes were disappointed. Mr. Crampton and myself accordingly signed alone the paper, a copy of which is herewith enclosed. You will lose no time in laying the same before the Nicaraguan government, and asking its immediate and serious consideration thereof. You will see that it proposes to restore to Nicaragua the port of Greytown and the country north of it as far as the Rama river, for a certain consideration therein stipulated, to be paid by Nicaragua to the Mosquito Indians. To this proposition she

will no doubt object, by saying that the Mosquito Indians have no right to the territory proposed to be ceded to her, and that it is unreasonable to expect her to pay for that which is already rightfully her own. Without, however, either raising or deciding the question as to her abstract right to the territory in question, the fact that she has not been in possession of it since the 1st of January, 1848, is notorious. Her authority over the territory, such as it was, was then forcibly expelled, and has never been resumed; and whatever may have been the rights or the motives of the party who performed this act, they must be presumed to have been satisfactory to that party, which cannot be expected to stultify itself by voluntarily and without equivalent surrendering that which it risked its reputation and expended its blood and treasure to obtain. By agreeing to pay the compensation proposed, Nicaragua would by no means be chargeable with inconsistency or dishonor, but would only yield to the stronger party—a frequent occurrence in the world's history. On the other hand, the compensation proposed is moderate in amount, and the time and manner of paying it will be made as accommodating to her as could reasonably be desired. She will then have full command of the port of Greytown, on both sides of the river San Juan. She will also have the exclusive right to navigate that river by steam. It is true she has contended for a right to the territory on both banks of the San Juan, and our proposition cedes the right bank to Costa Rica. The river, however, is obviously the best natural boundary between the two republics; and if, as is presumed to be the fact, Nicaragua, in claiming both banks, has been actuated by a desire to obtain exclusive control of the ship-canal, this expectation would not be thwarted by ceding the right bank to Costa Rica. It is probable that the canal, for a great part if not the whole length of the river, will be constructed in the bed thereof, by means of locks and dams. Should this prove to be the fact, the possession of the right bank by Costa Rica, pursuant to our proposition, would neither interfere with the construction or the operations of the canal, nor with the control of it by Nicaragua.

We also propose to cede the district of Guanacaste to Costa Rica. As this is understood to be in accordance with the wishes of the inhabitants of that district, it is not likely that Nicaragua would find it a desirable possession, even if it were to be retained by her. Besides, one of her supposed motives for persisting in her claim to Guanacaste is the fact that it contains the port of Salinas, on the Pacific, which has sometimes been spoken of as a terminus of the ship-canal. Inasmuch, however, as the recent survey by Colonel Childs, in the service of the Atlantic and Pacific Canal Company, has shown that the port of Brito, within the acknowledged territory of Nicaragua, is the most eligible terminus for the canal, if, in claiming Guanacaste, Nicaragua has, to any extent, been actuated by the supposed importance of Salinas, that motive is unfounded.

It is not improbable that some persons of influence and authority in that republic may have been advised that if the Nicaraguan government shall reject the plan of settlement proposed by us, a change of administration in this country will result in a change of policy, and that Greytown will be forcibly restored to her should this become

necessary. Allowing that this information may be correct, it is obvious that even if Nicaragua were to regain possession of Greytown by this means, her own great object, and the principal object of both Great Britain and the United States in interesting themselves in her affairs, namely, the construction of the ship-canal, would probably be indefinitely postponed; and even the transit by steamboats over her waters, from which it is understood she now enjoys both direct and incidental advantages, would be put an end to.

It is to be hoped, therefore, that moderate counsels will prevail there, and that the opportunity now afforded her (which will probably be the last one) of peaceably settling the complicated questions which have been so long pending, will not be inconsiderately rejected. It is certain that the ship-canal can never be even begun until every discernible cause for internal convulsion or foreign war in that quarter shall have been removed. If, however, the adjustment proposed should be accepted by her, to the confidence in the practicability of the work, which the recent survey is calculated to inspire capitalists, will be added the more important confidence that their funds invested in its construction will not be subjected to risks arising from the causes adverted to.

It is desirable that the decision of Nicaragua should be prompt, so that it may be known here in season for a quadripartite treaty to be signed here, and submitted to the United States Senate at its present session. In order to save time, and prevent the necessity of a further reference of the subject to that country, both the legislature and the President of the republic should act upon the subject, and ratify the quadripartite treaty which Mr. Marcoleta may then be instructed to exchange.

I am, sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

J. BOZMAN KERR, Esq., &c., &c., &c.

[Translation.]

Mr. Marcoleta to Mr. Webster.

WASHINGTON, May 2, 1852.

MR. SECRETARY OF STATE: Having seen and read at the department, on Saturday, the 1st instant, the communications and the bases which have lately been discussed between the Secretary of State of the American Union, her Britannic Majesty's minister, and Mr. Molina, minister of Costa Rica, in relation to the port of San Juan, the Mosquito coast, and the limits between Nicaragua and Costa Rica, and said matters having been treated and discussed without consulting, inviting, or admitting the representative of Nicaragua to such discussions, so that he might take a part in transactions which affect in so direct a manner the interests and rights of his government, the undersigned would consider himself as wanting in the performance of his duty if he were not to protest against that act.

The undersigned, therefore, proceeds to protest in due form against the exclusion which has been made in these matters of the representative of Nicaragua near the government of the American Union.

The undersigned avails himself of this opportunity to renew to the honorable Secretary of State the assurances of his most distinguished consideration.

J. D. MARCOLETA.

Hon. DANIEL WEBSTER,
Secretary of State, &c., &c., &c.

No. 12.

Mr. Hunter to Mr. Kerr.

[Extract.]

DEPARTMENT OF STATE,
Washington, May 4, 1852.

SIR: After the instruction to you of the 30th ultimo was signed, the proposition of Mr. Crampton and Mr. Webster was a little changed. The only material alteration, however, was, that as the proposition originally agreed upon allowed the canal company to locate two sections of land on the south bank of the San Juan, the proposition as signed makes that number four instead of two. This will explain what otherwise might have appeared to you as a discrepancy between the number of sections mentioned in the correspondence with Mr. Molina and the number stipulated for in the proposition.

* * * * *

I am, sir, very respectfully, your obedient servant,

W. HUNTER,
Acting Secretary.

J. BOZMAN KERR, Esq., &c., &c., &c.

Mr. Hunter to Mr. Walsh.

DEPARTMENT OF STATE,
Washington, May 4, 1852.

SIR: After the instruction to you of the 29th ultimo was signed, a slight alteration was made in the proposition signed by Mr. Webster and Mr. Crampton, giving to the canal company the right to locate four instead of two sections of land on the Costa Rican side of the river. This will explain what otherwise might have appeared as a discrepancy between the number of sections mentioned in the correspondence with Mr. Molina and those mentioned in the proposition itself.

It is not, however, by any means certain that the canal company will ultimately find it for their interest to locate, perhaps, more than one section on that bank. If, however, the reverse should prove to be

the fact, as Costa Rica will have jurisdiction over the whole, and as the lands reserved by her will be increased in value in direct proportion to those which may be occupied by the company, she will unquestionably consult her true interest by agreeing to the proposition as it stands.

I am, sir, very respectfully, your obedient servant,

W. HUNTER,
Acting Secretary.

ROBERT M. WALSH, Esq., &c., &c.

Mr. Hunter to Mr. Molina.

DEPARTMENT OF STATE,
Washington, May 5, 1852.

SIR: I have the honor to communicate a copy of the proposition to be addressed to the governments of Costa Rica and Nicaragua, respectively, for the adjustment of their differences in regard to the boundary between those republics, as finally agreed upon and signed by Mr. Webster and Mr. Crampton. You will notice that this proposition differs from the one in which you were invited but declined to join, inasmuch as it allows the canal company to locate four instead of two only of their eight sections of land on the Costa Rican side of the San Juan river. Although your refusal to co-operate in the recommendation was understood to be based upon the fact that your instructions did not warrant you in agreeing to permit the company to locate any of their lands on the south side of the river without a specific equivalent therefor to Costa Rica, it is hoped that your government, on maturely weighing all the circumstances of the case, will ultimately agree to allow even the four sections adverted to to be located there. In the first place, it may be considered questionable whether the company will deem it to comport with their interest to locate, perhaps, more than one section on the right bank of the San Juan. In the next place, even if they were to locate four sections there, the lands themselves, and the persons occupying or living on them, would be subject to the laws of Costa Rica. It is notorious, however, that the lands have not now any appreciable value. Their future value will be in direct proportion to the amount of capital and skill which may be applied to the development of their resources. If, therefore, the company should apply capital and skill to the cultivation of the sections allotted to them, this, besides raising the value of the lands reserved by Costa Rica, will give her an important source of direct revenue and other incidental advantages. These and other obvious considerations are commended to your candid consideration, and to that of your government.

I avail myself of this occasion, sir, to offer to you an assurance of my very high consideration.

W. HUNTER,
Acting Secretary.

Señor Don FELIPE MOLINA, &c., &c., &c.

Mr. Molina to Mr. Hunter.

LEGATION OF COSTA RICA,
Washington, May 8, 1852.

SIR: I have the honor to acknowledge the receipt of your letter of the 5th instant, accompanying a copy of the proposition to be addressed to the governments of Costa Rica and Nicaragua, respectively, for the adjustment of their differences in regard to the boundary question between those republics, as was finally agreed upon and signed by Mr. Webster and Mr. Crampton.

You very appropriately remark, that this plan differs from the one in which I was invited but declined to join, inasmuch as it allows the canal company to locate *four* instead of *two* only of their eight sections of land on the Costa Rican side of the San Juan river; and thereupon you kindly proceed to enlarge on those considerations which, in your opinion, might induce the Costa Rican government to accede to the concession, even in this extended form.

In reply, I beg to say that I will take the earliest opportunity to transmit the project in question to my government, together with a copy of your letter, that new instructions may be sent to me.

I regret, nevertheless, to observe that the proposed adjustment involves a far greater difficulty than even the cession (without any indemnity or restriction of choice) of the lands alluded to; I mean the perpetual surrender therein stipulated, on the part of Costa Rica, of her right to navigate by steam-vessels the Colorado and San Juan rivers, and the Lake of Nicaragua. I question very much whether Costa Rica will ever be disposed to subscribe to an absolute surrender of that right, although, in order to facilitate the construction of the ship-canal, she has been and is still willing to abandon to Nicaragua the control and direct advantages of the enterprise for such a period of years as may seem necessary to carry out that undertaking.

I have the honor to renew to you the assurance of my most distinguished consideration.

F. MOLINA.

WILLIAM HUNTER, Esq.,
Acting Secretary of State of the United States.

No. 13.

Mr. Hunter to Mr. Kerr.

DEPARTMENT OF STATE,
Washington, May 13, 1852.

SIR: Since the last despatch to you on the subject, it has occurred to Mr. Crampton and myself that, if the following two slight modifications of the proposition to Nicaragua and Costa Rica shall be made, its chances of ultimate success will be much increased.

Towards the close of article 1, after the words "in that part of the Mosquito territory hereby ceded to Nicaragua," insert the following: "which grants shall have been attended with residence on or possession of the lands granted." After the words "interfere with," strike out the words "other legal grants made previously to that date by Spain, by the Central American confederation, or by Nicaragua."

To article 3 add the following: "But it is understood that nothing in this article contained shall prevent the republic of Costa Rica from resuming its right to navigate the said rivers and lake by steam-vessels, when the charters of the Atlantic and Pacific Ship Canal Company or Accessory Transit Company shall either have expired by their own limitation or shall have been legally forfeited."

You will accordingly propose these modifications to the Nicaraguan government.

I am, sir, very respectfully, your obedient servant,

W. HUNTER,
Acting Secretary.

J. BOZMAN KERR, Esq., &c., &c., &c.

Mr. Hunter to Mr. Molina.

DEPARTMENT OF STATE,
Washington, May 19, 1852.

SIR: I have the honor to acknowledge the receipt of your note of the 8th instant.

If, as you remark, Costa Rica should entertain insurmountable objections to a surrender, in perpetuity, of the privilege of navigating the Colorado and San Juan rivers and Lake Nicaragua by steam-vessels, it is presumed that she could not reasonably object to enter into a stipulation promising a surrender of the same until the charters of the Atlantic and Pacific Ship Canal Company and of the Accessory Transit Company shall either have expired by their own limitation or shall have been legally forfeited. As the principal purpose of the United States and Great Britain, in proposing to give to Nicaragua the exclusive right to steam-navigation on that lake and those rivers, was to protect franchises acquired in good faith from Nicaragua, if that purpose could be accomplished, no good reason is perceived why that right should not be limited to the duration of the franchises referred to.

I avail myself of this occasion, sir, to offer to you a renewed assurance of my very high consideration.

W. HUNTER,
Acting Secretary.

Señor Don FELIPE MOLINA, &c., &c., &c.

No. 1.

Mr. Walsh to Mr. Webster.

GREYTOWN, May 28, 1852.

SIR: We arrived here in the Saranac the 25th, and will proceed to San José as soon as we can make our preparations for the long and arduous journey before us—a journey, for the most part, through a wilderness, which compels the traveller to take with him everything that may be needed on the way. We hope to be off the day after to-morrow, though the listlessness of the people with whom we have to deal will take its own time, in spite of every effort to stimulate it. The prices, also, demanded for boats and mules are so extortionate as almost to exceed belief. Unfortunately, the water in the river San Juan is now so low that steamers cannot run, and we find ourselves obliged to employ the row-boats of the country—a necessity productive of delay as well as of inconvenience and expense. The chief impediment, however, has been the difficulty of procuring mules to be in readiness for us at the spot where the Serapiqui ceases to be navigable. I greatly regret the detention on all accounts.

The flag of the Mosquito king is still flying here, but that is the only evidence of his sovereignty. The control of the town is in the hands of the foreign residents, principally Americans, who recently elaborated a constitution for themselves and elected a complete set of authorities. The natives were allowed to vote, and two or three of them obtained majorities for certain offices, but on some pretext of illegality their election was annulled. Upon what ground that illegality was established, was not made clear to the apprehension of the natives, who in consequence were with difficulty restrained from expressing their dissatisfaction in a belligerent manner. The practical interpretation would seem to be, that the fact of being born here is a disqualification for being elected, if not for electing; and that only those who do not labor under this disadvantage are entitled to all the privileges of citizenship. The mayor is an American named Martin, who appears to possess a kind of energy and talent well adapted to his anomalous and difficult position—a position in which justice, while wielding her sword with one hand, is obliged to point a revolver with the other. He has just won considerable credit by the mode in which he discovered and brought to justice the perpetrators of a robbery of a large sum of money from a Frenchman, who arrived here the other day on his return from California. A part of the money has already been recovered, and hopes are entertained of finding the rest. The excitement among “the Californians,” of whom there is a numerous body now here waiting for the next steamer, assumed for a time quite a threatening aspect. They were apprehensive that the robbers would not be properly dealt with, and seemed determined upon taking justice into their own hands; but the regular way in which the trial was conducted removed their suspicions, and the ultimate conviction of the culprits re-established peace. Two or three of the gang are, I believe, to be hung, and minor punishments will be inflicted on others. The whole

action of the court was under the authority of the new constitution, which completely ignores the dominion and laws of the indigenous aspirants to the sovereignty of the town.

The framers of this constitution would seem to cherish views of an eminently progressive nature ; for in the article defining the limits of the embryo metropolis, it is declared that they “commence at the mouth of the Indian river, thence run up through the channel of said river *fifteen* miles, thence in a direct line so as to include the head of the Machuca rapids, thence down the San Juan river to its junction with the Colorado, thence down the channel of the Colorado to the Caribbean sea”—an area of some fifty or sixty square miles ! The object of the foreigners here is avowedly to establish a free port, with as much circumjacent territory as possible, and they loudly proclaim that they will never submit to the rule of any native power. To Nicaragua they bear especial hate, which may prove a source of trouble in the execution of the treaty, should it be concluded. It is almost certain that, without some such aid as the treaty would afford, that country will never be able to obtain possession of the town, for there can be little doubt of the ability of the inhabitants to repel any attack. Indeed, if the stories told of the weakness and degradation of the Nicaraguans be true, one may easily credit the assertion of the “Greytowners,” that they can take the whole republic whenever they please. A step towards this result may, perhaps, be the appropriation of the district marked out by the article of the constitution alluded to above. Coming events cast their shadows too plainly in this quarter to need a prophet’s eye to discern them.

I have the honor to be, sir, with great respect, your obedient servant,
ROBERT M. WALSH.

Hon. DANIEL WEBSTER,
Secretary of State.

No. 2.

Mr. Walsh to Mr. Webster.

SAN JOSE, *June 11, 1852.*

SIR: We left Greytown on the 31st ultimo, and got here the 8th instant, after a journey of which it would be difficult to describe the fatigue and the risks. Four days and three nights were spent in the boat in which we were rowed to the landing-place of the Serapiqui, and four days and a half in crossing the mountains to this place—scrambling up and down precipices of most formidable aspect, or wading through quagmires from which extrication, at times, seemed to be almost impossible.

It will be out of the question for Costa Rica to cultivate much intercourse with the foreign world until a road is constructed to the Serapiqui. At the landing-place there is a sort of military post, where we were received by the officer in command with all due courtesy, and had the satisfaction of finding mules and men to carry our

luggage and provisions, sent by the government itself, which had been apprized of our coming by the messenger we had despatched to procure the means of transport. When within a few miles of this city, we were met by an aide-de-camp of the president, with a note from him, congratulating us on our arrival, and placing a house at our service, to which we were immediately conducted. It is among the best in the town, belonging to one of the principal families, who moved from it expressly for our accommodation—an act of hospitality and kindness well deserving of record. There is evidently a disposition to manifest all possible friendliness, both public and private; the mission being regarded not only as a compliment, but as something from which good may accrue to the country.

We have had interviews with the president and minister of foreign relations, and have sent to the latter a copy of the proposed arrangement, with alterations directed to be made in it by the despatch of 13th May, from the acting Secretary of State. There are good grounds, I think, for expecting a prompt acquiescence in the views of the two governments.

I have the honor to be, sir, with great respect, your obedient servant,
ROBERT M. WALSH.

Hon. DANIEL WEBSTER,
Secretary of State.

No. 3.

Mr. Walsh to Mr. Webster.

SAN JOSE, June 25, 1852.

SIR: Enclosed are copies of correspondence with the minister of foreign relations, and a decree of the legislative body, approved by the president, from which you will perceive that the government of Costa Rica has given its full consent to the proposed treaty. The modifications suggested in the last note of the minister are mere requests, in no way affecting that consent. They were discussed in our conferences, but we could only promise to communicate them to our governments with a recommendation of them to their kindly consideration. This government seems to be animated in all respects with the very best spirit, on which too much praise can scarcely be bestowed.

We shall proceed to Nicaragua without delay. If not unexpectedly detained there, I may be able to return to Washington by the end of next month, taking with me the originals of the documents above mentioned.

I have the honor to be, sir, with great respect, your obedient servant,
ROBERT M. WALSH.

Hon. DANIEL WEBSTER,
Secretary of State.

SAN JOSE, *June 16, 1852.*

The undersigned, commissioners of the United States and Great Britain, have the honor to enclose to his excellency the minister of foreign relations a copy of the propositions which they are directed by their governments to offer for the adjustment of the difficulties in regard to limits between the republics of Costa Rica and Nicaragua. It was after full investigation and mature deliberation that the two governments determined upon these propositions as most conducive to the ends of justice and the interests of the contending parties; and they cherish the confident hope that they will be promptly and willingly accepted.

The advantages to Costa Rica which will accrue from their acceptance are various and all-important. She will be relieved, in the first place, from that state of harassing agitation which the perpetual danger of foreign hostilities must keep up, and which is so baleful in its influence upon the industry and progress of the people. Men care not to work for the future, when that future is clouded over with uncertainty and apprehension. To remove an evil of such magnitude, great sacrifices may well be authorized; and were no other inducement presented, this alone would be sufficiently strong to call for a ready acquiescence in any arrangement which secures the blessings of tranquillity without the loss of honor.

But Costa Rica, in the next place, is not asked to make any concessions for which adequate compensation is not tendered. If she abandons some of her pretensions on the Atlantic, she establishes all of her pretensions on the Pacific. If she yields the barren delta of the Colorado, she gains the fertile district of Guanacaste. Even on the Atlantic side, also, she obtains the acknowledgment of an important right which she has not hitherto been able to enjoy—that of having the river San Juan for her boundary, and navigating it with all descriptions of vessels which do not interfere with the indispensable privileges of the company that has been formed for the construction of the inter-oceanic canal.

Again, a cheerful compliance with the proposals of the two governments will have the effect of awakening in them sentiments of kindness towards this country, which cannot fail to be attended with great and increasing benefit. The time is manifestly at hand when the relations between Costa Rica and the other nations of the earth are to be placed on a new and more elevated footing—when the comparative seclusion in which she has heretofore dwelt is to be exchanged for that intercourse with the world which it is the interest and the duty of every government to promote, as one of the chief guardians of civilization and the firmest bond of brotherhood among men. Of the friendly ties which will thus be formed, the most important certainly must be those which will connect her with Great Britain and the United States—countries whose position and influence point them out as allies from whose good offices the most useful aid may be derived.

The advantage that will result to Costa Rica from the construction of the canal should also be taken into account. To over-estimate it,

indeed, would be difficult. The door will be at once opened to the beneficial intercourse alluded to above, and the whole of this beautiful region will soon be brought under the fertilizing flow of a healthy emigration. The geographical position of Costa Rica is admirable—its moral position will be commensurately raised. Abounding in all the elements of national prosperity, what it needs is a population adequate to their full development. Such a population will be a certain consequence of the opening of the proposed route—not mere adventurers, seeking immediate gain at whatever detriment to others or hazard to themselves; but permanent, effective laborers in the great field of improvement.

Another and a final motive which may be adduced, is one that must appeal too powerfully to a government actuated by such feelings and aspirations as control the government of this republic, to require much stress. The magnificent enterprise in contemplation is not designed for the exclusive benefit of those directly concerned in it, but for the benefit of mankind. The governments that have taken it under their especial care are not prompted by narrow and selfish views. Their aim is the accomplishment of a work which will be productive of universal good. The glory to be earned by those who may contribute to it will be of a kind than which the page of history can hardly exhibit any more enviable or exalted—the glory of having created, not only a fresh and abounding channel of material wealth, but another and most efficient means of diffusing peace and good will. Such an opportunity of enrolling her name among the benefactors of the human family is not often accorded to a nation, and it is one which the undersigned cannot doubt will be eagerly seized by the enlightened men who preside over the destinies of Costa Rica.

The undersigned renew to his excellency the assurance of their most distinguished consideration and profound respect.

ROBERT M. WALSH.

CHARLES LENNOX WYKE.

His Excellency Don JOAQUIN BERNARDO CALVO,

Minister of Foreign Relations of the Republic of Costa Rica.

[Translation.]

NATIONAL PALACE,

San José, June 11, 1852.

GENTLEMEN: The undersigned had the honor to receive, with a note dated the 10th instant, a copy of the propositions of the governments of the United States and Great Britain for a final settlement of the difficulties relative to the limits between Costa Rica and Nicaragua; and it is a source of satisfaction to the undersigned to be able to assure Messrs. Walsh and Wyke that the president of the republic entertains the highest regard for this commission, and that, wishing to enter upon conferences relative to the important object it has in view, he has charged the undersigned, together with the minister of finances, to act accordingly.

If agreeable to Messrs. Walsh and Wyke, said conferences will begin at one o'clock in the afternoon on Tuesday the 15th instant, at the residence of the commissioners of the United States and Great Britain, &c., &c., &c.

J. BERNARDO CALVO.

[Translation.]

NATIONAL PALACE,
San José, June 16, 1851.

GENTLEMEN: Having considered the bases agreed upon by the governments of Great Britain and the United States for a definite adjustment of the question of territorial limits between Costa Rica and Nicaragua, and other objects of interest, the most excellent president of the republic has, on this day, been pleased to dictate the following resolution:

“Having seen and examined the convention signed at Washington, on the 30th of April of the present year, by the representatives of the governments of Great Britain and the United States, the object of which convention is to propose bases for an adjustment of the question of territorial limits between the republic of Costa Rica and the State of Nicaragua, other points relative to the Mosquito territory and the inter-oceanic Atlantic-Pacific canal being, at the same time, determined in said bases; sundry conferences having been held between the cabinet ministers of this government and Messrs. R. M. Walsh, special envoy of the government of the United States, and C. L. Wyke, consul general of her Britannic Majesty; and considering, that although one of the limits to the north of the territory of the republic has been, and is, by the constitution and various authentic documents in existence, the mouth of the river San Juan, where it empties itself into the Atlantic ocean; and notwithstanding that the republic was not consulted at the time of concluding the contracts which were entered into for the great work of the inter-oceanic canal across the isthmus, and that the independence of Costa Rica is not directly affected by questions with the Mosquitos; yet, in deference to the respected mediation of the governments of the maritime powers of Great Britain and the United States of North America, to the great interests of all commercial nations of Europe and America, in the construction of the inter-oceanic canal, and to the desire of settling, in a peaceful and friendly manner, with our neighbor, the State of Nicaragua, the territorial questions now pending, the executive power of the republic of Costa Rica, in Central America, assents, adheres, and subscribes to the bases agreed upon in Washington, on the 30th of April last, and contained in seven articles, which have been presented to this government by Messrs. Robert M. Walsh, envoy of the United States, and Charles L. Wyke, consul general of her Britannic Majesty, especially authorized to that effect; and the republic will, in due time, co-operate in the formation of a definite treaty, which is to be concluded upon said basis. Let the legislative power be informed of this resolution, in order that it may be pleased to approve the same if it thinks proper, and let Messrs. Walsh and Wyke be notified of the fact, for their information.”

And in transmitting to Messrs. Walsh and Wyke the foregoing resolution, the undersigned has been ordered to state that it would be desirable that, in the definite treaties, Costa Rica might not be so much sacrificed in defining her territorial limits, by taking, at the north, the Rio Colorado instead of the northern branch of the river San Juan, seeing that the right which the republic preserves and possesses, from time immemorial, to the aforesaid river of San Juan, to the point where it empties itself into the Atlantic, is indisputable; which is the northern limit of said republic, designated by the constitution and recognised by Spain, the Holy See, and other powers with which there are treaties in existence. That it would be likewise to be desired that no right should be vested in the inter-oceanic canal company to ask any tract of land over the territory of Costa Rica, in view of the fact that neither the government of Nicaragua nor the aforesaid company invited the government of the republic to co-operate in the contract relative to the canal enterprise, but that, on the contrary, said government was disregarded, by disposing *de facto* of the territory of its jurisdiction, or which at least was questionable, but which it possessed in good faith and by a just title. But if it should be insisted to grant to the canal company the right aforesaid on the territory of Costa Rica, then it is to be hoped that each section of territory shall not exceed three square miles, or, what is the same, one league in longitude and ditto in latitude—the republic reserving to itself full dominion and the exercise of its sovereignty over any company or colony which may be established in each of the aforesaid sections of land. That in the same manner it would be desirable that if, owing to circumstances beyond our control, it should be sought to carry out the right of the company to occupy other sections of land on the territory of Costa Rica instead of taking the same on the territory of Nicaragua, this government shall not be compromised into any subsequent arrangement with the government of that State, but that the company shall negotiate with the former the indemnity which may be due to Costa Rica—a convention to that effect being previously concluded. That it would be likewise to be desired to lay down in the treaty this principle: that in no case shall discriminating import duties be established in San Juan in regard to any State, nor heavier duties than those which are levied on the most favored nations, whatever may be the port duty, and whatever may be the produce and articles of exportation; and finally, that it would be likewise to be desired that the fulfilment of the treaty should be left, by an express article, under the respected guaranty and vigilance of the governments of the United States and Great Britain.

The government of Costa Rica hopes, from the enlightened judgment of Messrs. Walsh and Wyke, that they will be pleased to take fully into consideration the arguments advanced, and that they will use their immediate influence in enforcing said arguments upon the high consideration of their respective governments, whose equity inspires the authorities and the people of this republic with the utmost confidence.

The undersigned, &c., &c., &c.

J. BERNARDO CALVO.

SAN JOSÉ, *June 17, 1852.*

The undersigned have the honor to acknowledge the receipt of the note of his excellency the minister of foreign relations, dated yesterday, communicating to them the resolution of the president of the republic, by which he consents to the propositions made by their governments for the adjustment of boundaries between Costa Rica and Nicaragua, and which, he informs them, will be submitted to the legislative body for approval.

It is with sincere gratification that the undersigned have learned this decision of the president, so worthy of his eminent character; and they doubt not that the wisdom and patriotism of the legislature will sanction it without delay.

The remarks added by the minister respecting the changes which the government of Costa Rica would wish to have made in the definitive treaty to be celebrated at Washington, will be conveyed to the two governments at the earliest moment, and cannot fail to receive a respectful and friendly consideration, &c., &c., &c.

R. M. WALSH,
C. L. WYKE.

[Translation.]

Inasmuch as there has been received from the M. E. national executive the decree No. 10, of yesterday, which says:

"No. 10. Juan Rafael Mora, president of the republic of Costa Rica. Inasmuch as the M. E. Constitutional Congress has decreed the following: The M. E. Constitutional Congress of the republic of Costa Rica, in view of the bases agreed upon in Washington, by the representatives of the two great powers of Great Britain and the United States of the north, relative to the question of territorial limits which exists between the State of Nicaragua and the republic of Costa Rica, and in view of the approbation which the supreme executive power has given to the same, decrees:

"*Only article.*—The assent, adherence, and approval, which the supreme government of the republic has given, in the decree of the 16th instant, to the bases agreed upon in Washington on the 30th of April last, by the representatives of the governments of Great Britain and the United States, for an adjustment between the republic of Costa Rica and the State of Nicaragua, relative to the question of territorial limits, are approved. To the executive power.

"Given at the palace of the supreme powers, at San José, on the 22d day of the month of June, 1852.

"MIGUEL MORA, *Vice President.*
BRUMO CARRANZA, *Secretary.*
JOSE MARIA GARCIA, *Secretary.*

"NATIONAL PALACE,
San José, June 23, 1852.

"Therefore, let the above be carried out.

"JUAN RAFAEL MORA.

"*Minister of State in the department of the government,*

Therefore, I have thought proper to approve, confirm, and ratify, as by these presents I do approve, confirm, and ratify the aforesaid bases, consisting of seven articles, and signed at Washington, on the 30th of April of the present year, by Mr. Daniel Webster, Secretary of State of the United States, and Mr. John F. Crampton, envoy extraordinary and minister plenipotentiary of her Britannic Majesty, the resolution of this government, of the 16th of the present month, being likewise approved, confirmed, and ratified by these presents; and, in virtue of the same, all that relates to it, respecting the aforesaid bases and the above-mentioned resolutions, shall be fulfilled and observed in the republic of Costa Rica.

In faith of which, I have caused these presents to be issued, per triplicate, signed with my hand, sealed with the great seal of the republic, and countersigned by the Secretary of State in the Department of Foreign Relations, at San José, on the 23d day of the month of June, 1852.

JUAN R. MORA.

Minister of State for Foreign Relations,
JOAQU. BERNARDO CALVO. [L. S.]

SAN JOSÉ, June 24, 1852.

The undersigned have had the honor to receive the decree of the legislative body confirming the consent of his excellency the president to the propositions made by their governments, together with the note of his excellency the minister of foreign affairs. They beg leave to express their high sense of the excellent feeling and judgment displayed by the government of Costa Rica in the important business which has been so happily arranged. Its whole action in the matter will be duly appreciated by their governments, and must tend to strengthen the friendly sentiments which they cherish towards this well-regulated and prosperous republic.

The undersigned would avail themselves of this occasion to tender their warmest thanks for the kindness and distinction with which they have been treated since their arrival in the country. It is their intention to leave to-morrow for Punta Arenas, there to embark for San Juan del Sur. Wherever they go, they will carry with them a grateful impression of their residence in Costa Rica, and the sincerest desire for the welfare of its government and people.

The undersigned, &c., &c., &c.

ROBERT M. WALSH,
C. L. WYKE.

Mr. Kerr to Mr. Webster.

[Extracts.] ,

[No. 10.]

LEGATION OF THE UNITED STATES OF AMERICA,
Managua, July 28, 1852.

SIR: Having arrived at Leon on the 13th ultimo, I took occasion to forward to the department, immediately afterwards, by the hands of Mr. Heine, a responsible person, the copies of the treaties with Guatemala and San Salvador. I could have no guaranty of safety for these public papers except through a special messenger, and, after guarding them in person along the whole route, it would have been extremely vexatious to have lost them by any negligence in others casually in charge. Your Nos. 11, 12, and 13, with accompanying papers, have been received, and my last communication, with the treaties, must now be in Washington.

The letter of Mr. R. M. Walsh, of the 27th of May, with a copy of the proposed adjustment of all boundary and territorial difficulties in Nicaragua, as arranged between Mr. Crampton and yourself on the 30th April last, reached me on the 21st ultimo, and you will perceive, in my letter of the 23d, how promptly I took the matter in hand. The papers were transmitted to Mr. Castillon, at Managua, and I followed in a few days, expecting that Messrs. Walsh and Wyke might even then be on their way from Costa Rica. It is a long and tedious route, and within a few days only they have reached Nicaragua. Mr. Walsh, overcome by his fatigue, probably, has declined to visit Managua, intending to wait for my despatches at Granada, and Mr. Wyke, by way of Realejo, came on here two days ago.

A speedy settlement of the Guanacaste question, desirable on so many accounts, had always been kept in view by me, and in my conversations with the more prominent men of the country, I had never failed to point to existing difficulties as barriers, not only to private enterprise, but to the general good of both States. You may imagine, however, with what pertinacity the Nicaraguans must hold on to the popular idea of rights in Guanacaste and Mosquito, when most of their leading and influential men have, in some form or other, lent their name and influence to the controversy. The present director, Mr. Pinedo, has been a commissioner at one time in behalf of Nicaragua; and the secretary of foreign affairs, Mr. Castillon, won all his laurels in the discussion of the question. In fact, when I arrived at Granada last July, they were, one and all, rabid on the supposed backing of Costa Rica by England, and all my well-intentioned arguments to soothe their offended pride were received with distrust and suspicion. The only hope was, that practical views might take the place of party virulence, so soon as their high hopes of further commerce and wealth should be realized in a judicious and liberal management of the canal and transit scheme. Through the agency of both these corporations they allege that, as a government and a people, they have been grossly duped and deceived. It was just at the moment when such malign

influences were at work, that I was called to lay before the government the advisory paper of Mr. Crampton and yourself.

The letter of Mr. Castillon, accompanying the decree of the senate and chamber of representatives, has, as you will perceive, negatived, in the most positive terms, the proposed basis for adjusting the outstanding questions. Strong motives may be found for their decided course in the sneers and insinuations of the other States, conveyed in the oft-repeated sentiment that Nicaragua was already lost to Central America, having been passed over into the hands of Americans.

The publicity given to my official conduct during the outbreaks at Leon seemed for a while to have neutralized all force in such an idle and mischevicious idea; but it has been found to rankle among the politicians, so as to exhibit itself under the slightest and most flimsy pretexts.

In my last despatch, I forwarded the protest of this government of the 8th of May last, which was published at Salvador before it could have been received by me at Guatemala in due course of mail; and a protest to a like purpose, under date of 6th instant, has been renewed by Mr. Castillon. Mere rumors have been exaggerated into hostile acts on the part of Americans at Castillo Viejo, and the proofs, such as they are, will be found attached to the copy of his protest.

The same advantages could have been secured by a slight show of deference to the government; but on the 17th of October last, without consultation with the existing authorities at Granada, a deed was given, in the name of the transit company, to Mr. Wiener, for the site of a house near the old fort. Here is the direct attack on their eminent domain, to which the protest refers in such bitter terms, and, simple as it seems, it has proved the source of actual resentment among these people.

I have never been able to ascertain how far the accessory transit, as distinct from the canal company, was a measure positively needed to conserve, in their original integrity, the privileges under the charter and its supplements; but I did not think August last a proper time to enter upon negotiations with a provisional government, when a civil war was flagrant between two of the leading parties of the State. The subject was successfully pressed, even under such peculiar circumstances; and now it seems there is here a decided reaction, and but for the present effort on the part of the United States and Great Britain, presenting a moral spectacle to the world for the applause of just and generous men, the great project of an inter-oceanic canal would have failed, for a time at least, to secure the least confidence or respect.

Though quite ill on arriving at Managua, I sought an early interview with Mr. Castillon. In this private and informal meeting, he laid much stress on the allegation that the honor of the United States had been compromised during the mission of Mr. Squier, when the Nicaraguans were induced to forego an opportunity for more favorable terms in regard to a canal with commercial men in England. I could only answer, that the government of the United States had nothing to do with the actual construction of such a work, that being reserved for the individuals incorporated for the purpose by his own

State; while Mr. Squier's instructions merely authorized his good offices in facilitating, on all proper occasions, so grand an object. Though resentment for wrongs, alleged to have been perpetrated by England at this very juncture, was the prevailing sentiment, yet he intimated a charge of inconsistency in then entering the market against her, though we were now combining with that power against the rights of Nicaragua. His favorite idea was a guaranty from both powers that the canal should be successfully prosecuted, else there might be an unqualified abandonment of just claims without equivalent. With himself the question was, in fact, a mere matter of dollars and cents—the general good of the world being a mere feather in the balance against any violation of the eminent domain of Nicaragua in Mosquito or Guanacaste. Of course I could not but see that they had no disposition whatever to entertain the propositions made by the United States and England, and the decided negative in the letter of the 20th instant did not surprise me.

After being able to point to this spirited course towards the American chargé, they may now give the matter a new phase in the reply to Mr. Wyke; there will be nothing really definitive, but they may hit on some plan to gain time, till an answer from Mr. Marcoleta may be received. A despatch, as I ascertained yesterday, was sent off to him at Washington. The papers, though recommendatory and advisory, I must, from the closing paragraph, regard as an ultimatum from Mr. Crampton and yourself. It will be my duty, therefore, to relieve you from embarrassment in any immediate action you may contemplate, by refusing to receive, officially, all evasive matter, however cunningly prepared for the nonce.

I have the honor to remain, with high respect and regard,
JOHN BOZMAN KERR.

[Enclosure.]

Mr. Walsh to Mr. Kerr.

SAN JOSE, June 28, 1852.

SIR: I have the pleasure to inform you that the government of Costa Rica has given its full assent to the proposed treaty, as you will see by the enclosed paper. The English consul-general and myself will leave here in a few days for Nicaragua, embarking at Punta Arenas for either San Juan del Sur or Realejo. I trust that the Nicaraguan government has manifested a willingness to accept the propositions, and that I shall be able to proceed at once to Greytown to embark in the steamer of the 15th of July; in which case I shall, in all probability, reach Washington before the dissolution of Congress.

I have the honor to be, sir, with great respect, your obedient servant,

ROBERT M. WALSH.

Mr. Walsh to Mr. Kerr.

GRANADA, *July 22, 1852.*

SIR: I have just arrived in this place. Not being very well, and having nothing to do in Nicaragua but to get any despatches which you may wish to send to Washington, I propose to remain here until the first of next month, for the purpose of taking whatever you may have to transmit. I cannot remain longer than that time, as my instructions require me to return before the dissolution of Congress, which in all probability will take place some time in August.

Hoping to hear soon that you have been successful in your negotiations with the Nicaraguan government, I have the honor to remain, with great respect, your obedient servant,

R. M. WALSH.

Mr. Kerr to Mr. Walsh.

MANAGUA, *July 24, 1852.*

MY DEAR SIR: A special courier has just arrived from Realejo, and on Monday afternoon Mr. Wyke will be in Managua, when we may renew the attempt to bring about a better understanding with the government, in regard to the various points embraced in the recommendatory paper of the representatives of the United States and England, forwarded to me at Leon.

Having pressed the matter in every way personally, it is my intention to have a joint appeal on the arrival of Mr. Wyke; and the session of the chamber having been prolonged by a decree of yesterday, something may possibly be effected. I have very little hope, however, after so decided a stand from the first on the part of Mr. Castillon. Mr. Pinedo, the director, was once a commissioner in this boundary controversy with Costa Rica; and the minister of foreign affairs obtained much of his reputation from his polemic writings in England against Lord Palmerston, on these identical points.

Had a commissioner of Costa Rica accompanied you, I have some slight faith in the idea that a renewal on his part of the equivalents actually offered for a cession of Guanacaste, years ago, might have opened a postern of escape to Nicaraguan pride and obstinacy. This subject has always made capital for one or the other of the factions at work in the State—just now very unsettled, as there are vague apprehensions of fresh disturbances in November, on the approach of the election for director.

It is out of my power to leave here in the morning, as I proposed, in order to have a conference with you at Granada; and I regret it the more, as the sons might thus have reciprocated the friendly feelings subsisting for thirty years between the fathers. From some expressions of Mr. Lawless yesterday, I fear I should have missed you at

Granada, as the steamer he said was in the offing, merely waiting for you. The neglect of Mr. Wyke in such case, who has advised me of his coming on Monday by special courier, would have been inexcusable, and I am constrained to remain here.

I have had the decree copied, refusing to accede to the basis of settlement; but I should like to have had time for copying out the letter of Mr. Castillon forwarding it. It is somewhat piquant; and the whole subject had unfortunately to be presented by me just at a moment when there was much of spleen at the scandalous conduct (as the protest to me terms it) of the Americans at San Juan del Norte and Castillo Viejo. I am making up a package for Washington, which will be sent by the next steamer.

I remain, my dear sir, very respectfully and truly yours,
J. B. KERR.

Mr. Walsh to Mr. Kerr.

GREYTOWN, May 27, 1852.

SIR: I have the honor to forward to you a package from the Department of State, which I trust will speedily reach you. I arrived here yesterday in the United States steamer Saranac, in company with the new British consul-general for Central America, Mr. Wyke. We proceed at once to San José, Costa Rica, for the purpose of persuading the government of that country to accede to the views of England and the United States in regard to the affairs of this region. Thence we go to the capital of Nicaragua, where I hope to have the pleasure of meeting you, and learning that no opposition has been made to these views by the Nicaraguans. It is necessary for me to return to Washington in July, so that I would take the liberty of begging to have everything arranged, if possible, by the beginning of that month. The proposed treaty appears to be so favorable to Nicaragua, that I presume little objection will be made to it there.

I am, sir, with great respect, your obedient servant,

ROBERT M. WALSH,
Special Envoy to Costa Rica.

Mr. Kerr to Mr. Castillon.

LEGATION OF THE UNITED STATES OF AMERICA,
Leon de Nicaragua, June 23, 1852.

SIR: The commercial advantages in the construction of an inter-oceanic canal over this isthmus, so long an object of interest to the world, have given occasion to renewed efforts on the part of the governments of the United States of America and Great Britain, which the accompanying paper will better explain in full detail.

So long as the boundary question between Nicaragua and Costa Rica

remains in litigation, (liable, after years of fruitless negotiations, to the final arbitrament of the sword,) it is not to be expected that prudent capitalists will be ready to advance the necessary millions for the commencement and prosecution of such a work.

The claim of Costa Rica, in regard to a full and entire participation in steam power on the lake and river, has been met in a way to leave exclusive control over these waters with Nicaragua; and the cession of Guanacaste, as advised and recommended, would seem only to be in exact accordance with the will and wishes of the inhabitants of the district, unequivocally expressed during recent years. In truth, its possession, with so much of lukewarmness among the actual residents, would render it a nucleus for disaffection in Nicaragua, and even as a free gift, worthy of rejection. Besides, under the recent report of Colonel Childs, the accomplished engineer in the service of the Atlantic and Pacific Ship Canal Company, Salinas bay has ceased to be of importance as the possible terminus of the canal. The most eligible spot has been designated by him at a port always within the acknowledged limits of Nicaragua.

The position taken by the English government, in the forcible expulsion of Nicaraguan authority at San Juan, must be presumed to have been satisfactory to that power; and hence, in any arrangement, the alleged rights of the Mosquito Indians would naturally have a prominent place. In allowing a portion of territory to these native tribes, within which they may without molestation pursue their nomadic life, the government of Nicaragua is not urged to any course inconsistent with national honor and dignity. It is precisely thus that the United States government has dealt with a similar race within its limits.

I abstain from going more at large into these questions, so long a barrier to peace and progress in Central America, as I am fortunate in now signifying to the government of Nicaragua this evidence of good will, through the medium of a gentleman of enlarged views and practical experience, from whom an attentive and liberal consideration may be anticipated.

The legislature and executive have now in their own hands the extinguishment of all causes of external discord, and, with prudence and moderation, the Nicaraguan flag may soon wave at the mouth of the San Juan in token of possession and sovereignty. The completion of the canal under the auspices of Nicaragua will eventually outweigh a hundred-fold the equivalents proposed in this recommendatory paper, which I have now the honor to enclose.

The decision of Costa Rica may be looked for in a few days, and I would ask the immediate and serious attention of the Nicaraguan government for the present propositions. In a week or ten days Mr. Walsh, a special agent of the United States to Costa Rica, in company with the British consul-general for Central America, Mr. Wyke, will have reached Managua from San José, and, in case of a favorable hearing, measures may at once be taken for a quadripartite treaty to be submitted to the Senate of the United States before its adjournment to the next session. Mr. Walsh is ordered to return to Washington immediately.

I propose to be in Managua in a day or two, when we may confer in perfect frankness together; and in the meanwhile I beg that you will accept the assurances with which I have the honor to be, sir, your obedient servant,

JOHN B. KERR.

Mr. Kerr to Mr. Castillon.

LEGATION OF THE UNITED STATES OF AMERICA,
Managua, July 13, 1852.

SIR: In my communication of the 23d ultimo, I ventured to press upon the early action of the supreme government of Nicaragua a basis of settlement for certain long-pending questions, offering, to this day, almost insuperable obstacles to the commencement and progress of a canal over the isthmus.

Some definitive arrangement has become indispensably necessary, and it would give me much pleasure to know that the overture just made has been met in the true spirit of conciliation that prompted it.

Since communicating that paper, I have been advised that future complications may be avoided in regard to grants of land within the Mosquito territory, by inserting towards the close of article 1, after the words "in that part of the territory hereby ceded to Nicaragua," the following: which grants shall have been attended with residence on or possession of the lands granted. Again, it might be advisable in the same article to strike out after the words "interfere with," the following: "Other legal grants made previously to that date by Spain, by the Central American confederation, or by Nicaragua."

To article 3, add the following: But it is understood that nothing in this article contained shall prevent the republic of Costa Rica from resuming its rights to navigate the said rivers and lake by steam-vessels, when the charters of the Atlantic and Pacific Ship Canal Company and Accessory Transit Company shall either have expired by their own limitation, or shall have been legally forfeited.

Permit me to acknowledge the receipt of your communications of the 6th instant, and the moment I can procure reliable information in regard to Mr. Wiener's alleged claims under the Accessory Transit Company, I may be able to place his conduct in a more favorable light.

I arrived at San Juan del Norte in July, eighteen hundred and fifty-one; and this declaration of rights, to which your protest alludes, had even then been made by resident foreigners in charge of the municipal authority of the place. The best answer I have will be found in the paper which I have already submitted. The government of the United States would gladly see that important point in the hands and under the flag of Nicaragua.

I have the honor to remain, with much respect, your obedient servant,

J. B. KERR.

[Translation.]

HOUSE OF GOVERNMENT,
Managua, July 6, 1852.

By the department of state for foreign affairs, now in my charge, and by the order of the supreme government of this State, a formal protest was sent to your excellency against the acts of usurpation being committed in the old castle, and the destruction of those historical monuments which Nicaragua had preserved as unequivocal evidence of the supreme dominion which it had, and now has, over that territory, from very remote times.

A protest likewise and denouncement was made before your excellency against the plundering conduct of certain Americans, who, in connexion with those of other nations, have made of San Juan del Norte a Hanseatic city, making a regulation or constitution, establishing authorities, and exercising acts of sovereignty and independence of that which Nicaragua has proclaimed in her constitution.

Although your excellency has not replied to the above-mentioned communication, to-day the government learns by divers ways, and from certain testimony, that not only did not Mr. Weiner suspend the erection of the building for an hotel, which he has established in the castle, in opposition to the prohibition intimated to him by the agent by order of government, but that others have built various other edifices on the platform of the fort, the builders taking the bricks and other materials therefrom; that they have thrown down the earth on which the castle is built, and will probably cause thereby the destruction of that fortress.

And finally, the documents, an authentic copy of which I now have the honor to enclose to your excellency, will show that every day the independence and liberty of the country is threatened by the introduction of arms and the elements of war, in express violation of pre-existing laws, and the stipulation of the 14th article of the contract of 22d of September, 1849, celebrated with the company for the inter-oceanic canal, and which is declared valid by the convention of 20th August of last year.

My government, in entering into the aforesaid arrangement, had in view to bind itself with the United States and its citizens by the strongest bonds of friendship, thereby obtaining, by means of civilization, its more rapid progress and social advancement; it never could suspect that, from its sincerity and benevolence, it would be threatened with the sacrifice of its most vital rights, and that it would see itself compromised so far as to be thrust into a series of consequences so truly lamentable as those which must result from a violation or usurpation of its territory by individuals.

Wherefore, without prejudicing the right to take any other steps that may be considered necessary for the faithful enforcement of the laws confided to him, and to maintain the integrity of its territory and the sovereignty of the State, the supreme director has directed to me an order to protest anew against the aggression committed on this State by individuals, or companies, from the United States, for the

serious and disagreeable consequences resulting therefrom, and for the damages and expenses that may be caused to its citizens or to its foreigners resident.

The director cherishes the hope that the conduct of your excellency, always conciliatory, and the enlightenment and principles which you have professed since your residence in the country, will smooth all difficulties, and obviate every act which might tend to humiliate the rights and privileges of Nicaragua.

Be pleased, excellent sir, to receive the present protest, and, if you think best, to call to it the attention of your government, that such a course may be taken as may be deemed most proper, and at the same time to accept the assurance of the high esteem and respect with which I have the honor to be your faithful servant, &c., &c.,

FRANCISCO CASTILLON.

Hon. JOHN B. KERR,

Chargé d'Affaires of the United States near Nicaragua.

[Translation.]

GOVERNMENT HOUSE,

Managua, June 25, 1852.

SIR: The esteemed official note of your excellency, of 23d instant, is received, as also the accompanying copy of a treaty agreed upon by the government of your excellency and that of her Majesty the Queen of Great Britain, with the object of regulating the differences which exist between Nicaragua and Costa Rica in relation to their territorial limits.

My government, to which I gave notice of their reception, is informing itself in relation to the subject-matter therein referred to, so as to be enabled to reply to your excellency in such manner as the interest, honor, and dignity of the State shall require in an affair in which its rights may be so sensibly affected.

Opportunately I will communicate to your excellency the resolution of my government, and in the meantime I have the honor to be, with all consideration, the attentive servant of your excellency,

FRANCISCO CASTILLON.

Hon. J. BOZMAN KERR,

Chargé d'Affaires in Nicaragua.

Mr. Castillon to Mr. Kerr.

[Translation.]

HOUSE OF GOVERNMENT,

Managua, July 20, 1852.

HONORABLE SIR: Conformably with my promise made to your excellency in my despatch of 26th June last, my government has examined

the stipulations agreed upon between his excellency the Secretary of State of the United States and his excellency the envoy minister plenipotentiary of Great Britain in Washington, on the 30th of April of this present year, for the settlement of the territorial questions between Nicaragua, Costa Rica, and Mosquito.

My government comprehending the importance and consequence of this business, and not finding itself invested with the requisite power to resolve within itself the important questions involved in the aforesaid stipulations, has found itself under the obligation to transmit it to the legation chambers for such action as might be judged proper. The chambers having thereupon the subject under consideration, and inspired not only by the confidence which they have in the justice of the cause of Nicaragua, whose rights they believe to be greatly affected, but also in the enlightenment and moderation of the principles of the governments of Great Britain and the United States, and of the guaranties granted by international law in favor of all States, thought proper to refuse their acceptance of the aforesaid stipulations; at the same time, in the name of Nicaragua, a disposition to submit to an impartial arbitration of the questions in dispute, referred to in said stipulations, as your excellency will perceive in the decree, an authenticated copy of which accompanied this.

My government, therefore, in conformity with said decree, has directed me to manifest to your excellency that, with all deference for the governments referred to above, the American Union and Great Britain, as far as reconcilable with the honor and dignity of the State, finds itself in the painful situation of not being able to accede to the proposed stipulations; at the same time it has a high appreciation of the friendly offices and sentiments which your excellency has expressed, in their name, in communicating the reflections, with the character of recommendations, for the consideration of the governments of Nicaragua and Costa Rica.

Your excellency will see in this declaration that, although my government does not accede to the articles of agreement submitted to it, it evinces itself, nevertheless, no less disposed to cultivate with the governments of the United States and Great Britain the relations of friendship and good correspondence now happily existing, and which tend to peace and the general good.

God grant that a similar disposition may be preserved by the two governments aforesaid; and that duly appreciating the sentiments of that of Nicaragua, they may be willing to interpose their friendly interference in order that the reasonable proposition for an impartial arbitration, suggested by Nicaragua, may be adopted by Costa Rica and Great Britain, so that the territorial question now under consideration may be harmoniously terminated.

As to the stipulation between Great Britain and the United States relating to the affairs of the Atlantic and Pacific Canal Company and that accessory to the transit, and contained in articles 4th, 5th, 6th, and 7th of aforementioned stipulations, my government protests that it will not agree, as it has not agreed, to any regulation which shall in any manner alter the conditions of the primitive contract of the 22d September, 1849, the modifications of the 11th April, 1850, and of

the agreement of the 19th August, 1851, which shall in all cases be the invariable rules for its conduct; that it will none the less refuse to accept any other arrangement which shall directly or indirectly jeopard the rights of Nicaragua, either on its coasts, ports, rivers, or lake, or even in the canal and its dependencies, or in any point of its territory, whose integrity it may be desirable to preserve, notwithstanding that the said regulations should have been agreed upon by the aforesaid governments of the United States and Great Britain, or with any other power, unless there should be present on the part of this State a minister plenipotentiary, and he concurring thereto; and not even then, until the agreement of said minister has been previously ratified by the legislative power.

With the foregoing, which I hope your excellency will make known to your government, as I now request of you, I have, by order of my government, replied to your highly esteemed communications, dated on the 23d of June last, and on the 13th of the present month.

I have the honor to renew to the Hon. Mr. Kerr the assurances of my distinguished consideration and friendship.

FRAN. CASTILLON.

HON. MR. KERR,
*Chargé d'Affaires of the U. S.,
near the Government of Nicaragua.*

No. 32.

The Director of the State to its inhabitants.

Inasmuch as the legislative assembly has decreed as follows: The senate and chamber of representatives of the State of Nicaragua in assembly constituted—

DECREE.

ART. 1. The State of Nicaragua does not accept the *projet* of agreement or recommendatory bases adjusted on the 30th of April last between his excellency Daniel Webster, Secretary of State of the United States, and his excellency John F. Crampton, envoy extraordinary and minister plenipotentiary of her Britannic Majesty in Washington, for the regulation of the territorial boundaries of Nicaragua and Costa Rica, and for the separation of the Mosquito coast.

ART. 2. The State of Nicaragua is disposed to an examination (*ventilar*) of the questions referred to in said bases by an impartial arbitrament.

ART. 3. The State of Nicaragua solemnly protests against all foreign interference in matters of her administration, and against the use of force to restrain her will and rights.

Done in the saloon of session of the chamber of representatives,

Managua, July 14, 1852. Augustin Aviles, N. President ; J. Joaquin Cuadra, R. Secretary ; J. Mar. Bolaños, R. S.

To the EXECUTIVE.

Hall of senate, Santiago de Managua, July 16, 1852.—Miguel R. Morales, S. P. ; J. Guerra, S. S. ; José de Jesus Robleté, S. S.

Therefore, let it be complied with.—Managua, July 19, 1852. J. Lauriano Pineda.

To the minister of foreign relations and government.

True copy :

CASTILLON.

MANAGUA, *July 20, 1852.*

[Translation.]

Mr. J. de la Rocha to Mr. Kerr.

HOUSE OF GOVERNMENT,
Managua, May 8, 1852.

On the 19th of February last, a communication, by order of the Director, was addressed to your excellency, denouncing the works commenced by certain Americans at the old castle—the destruction of its platform, and the appropriation of the materials thereof, and construction of edifices therewith, without even having the courtesy to advise with the supreme government, and the legitimate representative of the interests of the State, to which belong the ground and the works thereon erected, the antiquity and importance of which are self-evident.

In your reply of the same date, your excellency offered to make all possible efforts to prevent the destruction of the remains of the ancient fortress, identified with the history of the country ; you assured that, if the transgressors were your fellow-citizens, they would promptly listen to a just representation against their illegal proceedings. The government, at a consultation held on the 24th December, year before last, having resolved to establish a preventive post of the customs at the aforesaid point, the old castle, being the most fit for the suppression of smuggling carried on in the State, and even in vessels belonging to the inter-oceanic company, directed the collector of customs at San Juan to make a reconnaissance of those works, and that he should order them to be suspended, for the government had properly understood that the execution of said works was nothing else but an abuse committed by some private speculators ; but how great was the surprise of the Director to find among the documents with which he was furnished by the commissioners, the act of cession made by the inter-oceanic canal company on the 17th of October, 1851. This surprise was increased by finding that the company assured to Mr. Wiener and his successors the absolute right of property in the ground, thus showing an evident determination to usurp in fact the territory of the State, reckless of its rights, and without any consideration for its dig-

nity, which demands a satisfaction and indemnity for the State. In order that the government should be informed of these transactions, and standing as it did by the act above cited, that the hotel ordered to be erected in the old castle would be under the direction and approval of the company, resolved to call upon Mr. John Doyle, the accredited agent of the company near this government; and when it expected a satisfactory reply, was only told that the resolution of the company, in relation to the house of Mr. Wiener, having been anterior to his arrival in this country, he had written to his principals for information and instruction. In the meanwhile the government, vigilant in preserving the rights and privileges of the State, directed its subaltern agents to omit no important notification concerning ulterior steps in an affair in which was no less compromised the integrity of the territory than the independence and liberty of the country. In compliance therewith, the functionaries of the occidental department have manifested to the government that the contractor at the old castle not only continued his first work, but that he had formed a parapet on the ground, and mounted a piece of artillery; that he has thrown down the earth, and thrown broken bottles into the water at the landing, for the purpose of preventing the landing of our canoes, and that many of our sailors who were obliged to work at this place, stuck full of these articles artificially arranged, were thereby wounded; that a public sale of liquors (a monopoly of the State) was established. In addition to these, and by a rare coincidence, the English authorities established in San Juan del Norte having withdrawn from that point, the American residents there, with other foreigners, have declared the territory independent of Nicaragua, made a constitution, by popular election chosen a mayor, and established a tribunal of justice; that is, they have consummated an overt act of usurpation, occupying in fact the most interesting part of the territory of the State, in opposition to the stipulations agreed upon between the enlightened government of the United States and that of Great Britain, on the 19th of [April,] 1850, and contrary to the hopes which Nicaragua had conceived, as much from the magnanimity of the American government, as from the generosity with which it (Nicaragua) had offered the advantages of its position to the fellow-citizens of your excellency. The intention was truly foreshadowed even in the newspapers of the United States. In the Herald of 30th of March, year before last, which your excellency has probably read, alluding to the restitution of the above-mentioned port (San Juan del Norte) to the dominion of Nicaragua, are the following words, without any attempt at concealment: "With the slightest pretext we will drive out, without much ceremony, its officers; for we are no more favorably disposed to the cause of Nicaragua than we are to the Anglo-Mosquito flag."

The impatience to arrive at this end was such that they anticipated all faction, and the most scandalous separation was effected—scandalous for the great indignity and serious offence given to a friendly nation; scandalous for the violence which was committed on international law, without any motive whatever from Nicaragua, without pretext which would authorize it, and without permission from the supreme authority, which, in the name of the State, holds in that

territory the eminent dominion ; scandalous, finally, for the active part taken in it by the individuals of that nation which is probably the most favored in Nicaragua.

The supreme government of the State, so far from believing that the United States have acquiesced or concurred therein, has instructed its plenipotentiary to that government to make a proper claim for the offence which Nicaragua has received by these acts committed by citizens of that republic. But while in the meantime that the enlightened government of the American people is taking cognizance of and determining in relation thereto, the silence of the government of Nicaragua might be interpreted as a renouncement of its rights, or as a toleration of the same, it has expressly directed me to address to your excellency the present communication, protesting, through me, that now, nor at any time whatever, has Nicaragua renounced her rights of proprietorship and present dominion over the port of San Juan, the old castle, and adjacent territories, no matter what may be the consideration and political existence with which it may be designed to invest the act of usurpation ; that Nicaragua will make proclamation of her rights in all the civilized nations of the world, before whose tribunals her rights will be vindicated, notwithstanding her debility, in opposition to the strength with which she is threatened and cannot resist. I am furthermore directed to make manifest to your excellency the hope, that even now inspires it, of your excellency's mediation ; and, from your reconciliatory character, that you will be enabled to arrange the differences to which I have above referred, without any grave and serious results, and without any interruption of the friendly relations of both countries.

With this inducement, I have the peculiar satisfaction of renewing to your excellency, with the utmost sincerity, the offering of friendship and esteem with which I sign myself your humble servant,

JESUS DE LA ROCHA.

True copy. MANAGUA, *July 28, 1852.*

The CHARGÉ D'AFFAIRES

Of the United States of America.

[Translation.]

Mr. Calvo, Minister of Foreign Affairs of Costa Rica, to Mr. R. M. Walsh, special envoy.

NATIONAL PALACE,
San José, June 25, 1852.

SIR: It is very acceptable and satisfactory to the undersigned to be able to place in the hands of Mr. Walsh an authenticated exemplification of the decree which the President of the republic, with full authorization on the part of the national representatives, has promulgated on the 23d instant, confirming and ratifying the assent and adhesion of Costa Rica to the bases signed at Washington on the 30th of April of the present year, for an agreement, which gives as its result the

definitive and friendly determination of the question of territorial limits pending between this republic and that of Nicaragua, and removes the difficulties which might embarrass the prompt projected construction of the inter-oceanic canal.

The government, convinced of the stringent necessity and convenience of maintaining, without change, the fraternal relations which happily exist between Costa Rica and Nicaragua, and that every source of disagreement which might affect the two countries should be removed, has considered this matter with the greatest interest, giving to it the preference which its importance demanded, subscribing, after mature deliberation, to the bases indicated, in testimony of its adhesion to the conservative principle of all communities, which is universal peace.

But not this alone has determined the government to accept the bases referred to. It is the desire to contribute, on its part, to the well-being of the human race; it is the hope that it will positively improve the condition of Costa Rica and Nicaragua, by the achievement of that great work the inter-oceanic canal; it is the supreme confidence which it places in the greatest maritime powers of Europe and America which take such interest in the future of these regions; it is, in fine, the sincere respect with which it contemplates the high intermediation of these governments in affairs which, perhaps, might present in the future serious results, contrary to the peace and security of peoples who are brothers and neighbors. Therefore this government is much gratified that an occasion like the present has provided the means to express the conformity of its sentiments with those of the United States and of Great Britain, in the important matter which they have treated, and offers its fervent wishes that the conclusion may have the happy result which is to be desired.

The undersigned avails of this occasion to signify afresh to Mr. Walsh that he is, with expressions of true friendship and sympathy, his obedient, humble servant,

JQ. BERN. CALVO.

[Translation.]

Juan Rafael Mora, President of the Republic of Costa Rica in Central America.

Whereas Mr. R. M. Walsh, special envoy of the government of the United States of North America, and Mr. Charles L. Wyke, consul general of her Britannic Majesty, have presented to this government the bases agreed upon in Washington by the governments of the United States and Great Britain, on the 30th April last, for a definitive settlement of the questions of territorial limits pending between this republic and the State of Nicaragua, and other important subjects, which bases, translated into Spanish, article by article, read as follows:

* * * * *

[Here follow the Webster and Crampton bases.]

Whereas, upon consideration of the hereinbefore recited bases, this department on the 16th instant adopted the following resolution :

NATIONAL PALACE,
San José, June 16, 1852.

Having read and examined the convention signed at Washington on the 30th of April of the present year, by the representatives of the governments of Great Britain and the United States, the purport of which convention is to propose bases for an accommodation between the republic of Costa Rica and the State of Nicaragua of the question of territorial limits, and at the same time defining in said bases other points relating to the Mosquito territory and the Atlantic and Pacific inter-oceanic canal, having had several conferences of the ministry of foreign affairs of this government with Mr. R. M. Walsh, special envoy of the government of the United States, and Mr. C. L. Wyke, consul-general of her Britannic Majesty, and considering that, although one of the northern boundaries of the territory of the republic has been, and is, by the constitution, and by various existing authentic documents, the place at which the river St. Juan empties itself into the Atlantic ocean, and notwithstanding that the republic was not consulted on the occasion of closing the agreements which have been made for the great work of the inter-oceanic canal across the isthmus, nor that the independence of Costa Rica is not directly affected by the Mosquito question, yet, in deference to the respected mediations of the governments of the maritime powers of Great Britain and of the United States of North America, to the great interests of all the commercial nations of Europe and America in the construction of the inter-oceanic canal, and to the desire to terminate pacifically and amicably with our neighbor, the State of Nicaragua, the pending territorial questions, the executive power of the republic of Costa Rica, in Central America, assents, adheres, and subscribes to the bases agreed upon at Washington on the 30th of April last, and contained in seven articles, which have been presented to this government by Mr. Robert M. Walsh, envoy of the United States, and Mr. C. L. Wyke, consul-general of her Britannic Majesty, specially empowered for this purpose ; and on a fitting occasion the republic will concur in framing the definitive treaty which is to be made upon said bases. Let this resolution be communicated to the most excellent legislative authority, that it may be approved if judged proper, and notified to Messrs. Walsh and Wyke, for their information.

JUAN RAFAEL MORA.

Minister of State, Department of Foreign Relations,
JOAQUIN BERNARDO CALVO.

And whereas the decree No. 10, of yesterday, has been received from the most excellent the legislative authority, which says :

No. 10. Juan Rafael Mora, president of the republic of Costa Rica.

Whereas the most excellent constitutional congress has decreed what follows :

The most excellent constitutional congress of the republic of Costa Rica having before it the bases agreed upon at Washington by the

ministers of the two great powers, Great Britain and the United States of the north, on the question of territorial limits which is pending between the State of Nicaragua and the republic of Costa Rica, and in view of the approval accorded to them by the supreme executive power,

DECREES :

Article 1st and only one.—Approval is given to the assent, adhesion, and subscription which the supreme government of the republic has accorded, under date of the 16th instant, to the bases agreed upon at Washington on the 30th of April last, between the representatives of the governments of Great Britain and the United States, for an accommodation between the republic of Costa Rica and the State of Nicaragua on the question of territorial limits pending between both countries.

To the EXECUTIVE POWER.

Given at the palace of the supreme authorities at San José, the twenty-second day of June, 1852. Miguel Mora, vice president. Brumio Carranza, secretary. José Maria Garcia, secretary.

Therefore, let it be executed. National Palace, San José, June 23, 1852. Juan Rafael Mora. Minister of state, office of executive administration, Joaquin Bernardo Calvo.

Wherefore, I have deemed good to approve, confirm, and ratify, and by these presents do approve, confirm, and ratify, the enunciated bases consisting of seven articles, and signed at Washington the 30th of April in this instant year, by Daniel Webster, Secretary of State of the United States, and John F. Crampton, envoy extraordinary and minister plenipotentiary of her Britannic Majesty; also approving, confirming, and ratifying by these presents the resolution of this government of the 16th of this present month; and in virtue thereof the republic of Costa Rica will fulfil and observe all that concerns her in respect of the expressed bases of the resolution mentioned.

In testimony whereof, I have caused these presents to be done in triplicate, signed with hand, sealed with the great seal of the republic, and countersigned by the secretary of state of the department for foreign affairs on the 23d day of the month of June, 1852.

JUAN R. MORA. [L. s.]

JOAQUIN BERNARDO CALVO,

El Ministro de Estado en el

Despacho de Relaciones Exteriores.

Mr. Kerr to Mr. Webster.

[Extracts.]

[No. 11.]

LEGATION OF THE UNITED STATES OF AMERICA,

Managua, July 30, 1852.

SIR: On closing my despatch of the 28th instant, and just as I was in the act of paying him a visit at Granada, Mr. Walsh came up here.

We have been now two days together, and, by a personal interview with the director and Mr. Castillon, he will have detected under what complications the government here is disposed to embarrass the subject of a settlement with Costa Rica, and all regulations touching the future disposition of the Mosquito coast. They have most certainly hardened their hearts with more than Egyptian stubbornness against every attempt on the part of the United States government to lead them otherwise than their pride suggests.

That which I mentioned on Wednesday, as a probable thing, has actually occurred. Mr. Wyke last evening had a reply to his communication, and, by way of set-off to the proposed bases of settlement at Washington, he received a series of articles as modifications, duly drawn in strict adherence to their ancient claims and pretensions. These Mr. Castillon sent also to me in a special communication. My reply of this morning is submitted for your examination, and all the papers have been copied for this despatch. * * * *

With sincere respect and regard, your obedient servant,

J. B. KERR.

Mr. Castillon to Mr. Kerr.

[Translation.]

GOVERNMENT HOUSE, *July 29, 1852.*

HONORABLE SIR: Mr. Charles Lennox Wyke, consul-general of her Britannic Majesty, has presented the bases agreed upon at Washington for the adjustment of the territorial questions between Costa Rica and Nicaragua, which your excellency was pleased to recommend to the attention of my government, inciting it, notwithstanding my reply to your excellency of the 20th instant, to take into its consideration this business, and to select some other medium through which to put a speedy and friendly termination to the differences.

My government, abounding in the same wishes and philanthropic sentiments as the American Union and Great Britain, has not been able to do less than comply with the friendly invitation of Mr. Wyke; and having entered into a new examination of the aforementioned bases, analysed its articles, and meditated maturely on each one of them, guided by the spirit of good faith and honesty which forms the distinguishing feature of its character, has instructed me to say to the aforementioned consul, notwithstanding its having declared the disposition of the State to terminate these questions by means of an impartial arbitrament, it might accede to the proposed basis, if it were possible to adopt certain modifications which I have the honor to enclose to your excellency; supplicating at the same time, if you should think it proper, to be pleased to submit them, with your recommendation, to the consideration of your government, for the purposes that they may give rise to.

My government, with the expectation that they will meet with a favorable reception, has instructed its minister plenipotentiary in

Washington to confer with the ministers of Great Britain and the United States in relation to the points embraced in said modifications, without prejudice of the arbitrament referred to in the decree of the chambers, which I communicated to your excellency in my aforesaid communication of 20th instant, in case that the said modifications should not be accepted as is desired.

Accept, &c.,

FRANCISCO CASTILLON.

Hon. Mr. KERR,

Chargé d'Affaires of the United States.

[Translation.]

Modifications with which the basis established at Washington on the 30th of April, for the arrangements of the questions concerning territorial boundaries may be made acceptable to Nicaragua.

ARTICLE 1. The Mosquito Indians and the territory bearing the same name are incorporated and united forever with Nicaragua; in which they shall enjoy the same rights, and will be subject to the same obligations, as the other inhabitants of that State, and in the terms established in its fundamental charter. Said territory shall be considered as a department of the State, and as such shall contribute with its respective representatives and senators to the legislative chambers, in the form and in the ratio which shall be determined by a special law; consequently, commerce between that territory and the other towns of the State shall be entirely free and untrammelled, as in the ports, rivers, and lakes, and in the respective portions of territory for the navigation and transit of effects and carriages which shall obtain perfect security.

ARTICLE 2. Nicaragua nevertheless promises—

1st. To grant an indemnization for the edifices and improvements made in the port of San Juan, to the Mosquito Indians four per cent. of the net products of said port for the space of five years, said sum to be paid annually at the custom-house of aforesaid port to the municipality which may be established there, in order that it may be applied to objects for the common benefit of said inhabitants.

2d. To assign an equitable pension to the cacique or chief of the Mosquitos during his life.

3d. To recognise and respect as lawful the grants of lands which, since the 1st of January, 1848, to the present time, have been made by the authorities of the Mosquito territory, with the exception of those grants which may be opposed to those which were formerly made by the Spanish government, by the federal government of Central America, or by that of Nicaragua, or that may be contrary to the privileges or operations of the Atlantic-Pacific Canal Company and that accessory to the transit, or even if such grants be at those points which the State may require for forts, arsenals, or other public buildings, which points must remain at the disposal of the State itself.

ARTICLE 3. The port shall be denominated hereafter San Juan de Nicaragua, and the public municipal authority shall be exercised in the name of the State, the same as in all the rest of the territory united and incorporated within it in virtue of the present treaty.

ARTICLE 4. The limits of the territory of Nicaragua on the side of Costa Rica shall be those which comprised anciently the province of Nicaragua, from the river Salto on the Pacific, and stretching a diagonal line to the river Parismina on the Atlantic. Both States shall, within one year from the ratification of this treaty, appoint one commissioner and one surveyor for each one of said States, in order that they may make a reconnaissance of the ground, and proceed to a demarcation of the boundary conformably with this stipulation. The said commissioners shall take the necessary observations to make a special map of the dividing-line, which (said map) shall be an integral part of this treaty, and shall have the same force as if it were inserted in it, giving to each party the copies that may be desired, to be signed by all, so that if hereafter any dispute should arise from any infraction thereof, in which event it shall be considered authentic and shall be held as full proof. And, in order that in this operation there may not be the slightest difficulty, said commissioners shall give names, by common consent, to the rivers and woods which have none, and shall distinguish them on the map with all minuteness, and shall erect with stone and mortar, in the proper places, corners or marks; but it is stipulated that the navigation for the entire course of the rivers which may be within the limits of Nicaragua, from that point at which each one commences to be navigable to its mouth, as likewise that of the lake or lakes and navigable waters, shall be entirely free and common to the citizens of both States, without any restriction or special condition which may favor the one more than the other; it being well understood that the citizens of Costa Rica shall be bound as well as those of Nicaragua to the only limitation established in the 23d article of the contract celebrated with the company of White on the 22d September, 1849, and that all will have to conform to the rules concerning the government of the navigation and other laws of the State.

The State of Costa Rica shall enjoy—

1st. Entire exemption from payment of introduction duties, for the space of ten years, in the port of San Juan del Norte.

2d. Absolute exemption, forever, from duties on the exportation of her products, manufactures, &c.

3d. Like liberty and exemption from duties in the navigation of the Sarapiquí, with an obligation on the part of said Costa Rica to make, at its expense, to render it navigable, and preserve it in that state, in the State in which it may be after the execution of said works.

4th. To establish at that point in said river where it joins the San Juan, or at any other point which it may deem convenient, edifices for custom-house stores or warehouses, and for the situating of custom-house officers.

5th. Power or liberty for its citizens to hold warehouses in San Juan for depositing their merchandise, which they may import for the interior of its territory, for the space of fifteen years. All the foregoing points shall be regulated by a special convention.

ARTICLE 5. The State of Nicaragua, with a view to facilitate the execution of the great inter-oceanic canal, in the terms stipulated by the contract of the 22d September, 1849, binds itself by these presents not to construct, nor permit to be constructed, any mole, wall, or place of embarkation, or any other work whatever, which may embarrass the works of the canal, or the navigation or entrance to the ports, rivers, or lakes, where said work may be executed. It is well understood that the exclusive privilege granted to the company accessory to the transit, and the authorization which is given to it in the 1st article of the agreement of 19th August, 1851, is not to exceed the limits and objects designated in the 30th article of the primitive contract of 22d September, 1849, which is to promote the prompt execution of the canal, and for, in case that it should be impracticable, according to what has been declared to the company, said company being bound to submit strictly to said article 30th, conformably with the 9th of aforementioned agreement of 19th of August.

ARTICLE 6. In case of the accomplishment, in whole or in part, of the projected inter-oceanic communication through the territory of Nicaragua, the flag of Great Britain, and also of the United States, as well also as the merchandise and subjects of both said powers, shall enjoy, in the transit, the same advantages and exemptions which may be granted to the flag, merchandise, and subjects of the most favored nations; Nicaragua will regulate these points by means of the treaties of amity, alliance, and commerce, which it is disposed to make with the two high contracting powers; and they obligate themselves, on their part, to unite their efforts with those of the government of Nicaragua to guaranty the neutrality of this important route for inter-oceanic communication, for the purpose of protecting the sovereignty of the State, and a free transit against all embargo or confiscation, and to secure the capital invested in the expenses for said work; which said guaranty is conditional, and, with previous announcement thereof to the government of Nicaragua, can be retracted in the cases especially set forth in the fifth article of the agreement adopted in Washington by the ministers of Great Britain and the United States; and, for the purpose of fixing the distance within which vessels of all nations shall be exempt from blockade, detention, or capture, by any of the belligerent parties, it is declared by this, that it shall extend to all the waters comprehended within the distance of thirty nautical miles from low-water mark at the two extremities of said canal.

ARTICLE 7. It being desirable that time should not be unnecessarily lost in the commencement and construction of said canal, the governments of the United States and Great Britain and Nicaragua agree, by these presents, in case that the company to which has been conceded the privilege of carrying out the enterprise shall not accredit, within the space of one year from the date of the ratification of the present contract, that said company has subscribed a capital sufficient for the execution of the same, or of insuperable obstacles and difficulties of a nature to impede the work or the construction of a railroad, then there shall be no obligation on the part of Nicaragua to observe said contract, and the company shall lose the privilege the moment

that any other company, disposed to commence and continue the construction of the canal, shall ask for it in the proper form. The government of Nicaragua, after having heard from those of the United States and Great Britain, will grant the privilege, under such stipulations and conditions as may be most adapted to complete the great object.

ARTICLE 8. The company accomplishing the transit shall obtain the same protection agreed upon in the convention of April 19, 1850; and, in the present one, it shall be enjoyed by the Atlantic-Pacific Canal Company; always, however, on condition that it shall be limited to the purpose of promoting and facilitating the canal on the terms stipulated in article 30th of the primitive contract of September 22, 1849; the which shall be inviolably observed in conformity with article 9th of the agreement of August 19, 1851. It is understood, however, that any other article of said agreement, which might alter it, shall be considered as null, of no value or effect, and the authority granted to the company, in virtue of article 8th, shall cease.

ARTICLE 9. The present convention shall be ratified by the contracting parties, and exchanged at Washington, within six months, to be counted from this date.

CASTILLON.

MANAGUA, *July 29, 1852.*

Mr. Kerr to Mr. Castillon.

LEGATION OF THE UNITED STATES OF AMERICA,
Managua, July 31, 1852.

SIR: You will remember that, in our informal meeting on the evening of the 8th instant, just after my arrival at Managua, an idea was thrown out, of the existence of some documentary evidence upon which you felt authorized to base, on behalf of your government, complaints of a want of good faith in this recent *projet*, recommended as the result of the joint councils of the United States and Great Britain.

It was reiterated with marked emphasis yesterday, when I had through you the honor of presenting to his excellency the director the distinguished gentleman sent in behalf of the United States to Costa Rica, and now on his way to Washington.

I am just closing a despatch to the Department of State, and you will oblige me very much by stating the circumstances under which any such documentary evidence could have had its origin, at twelve o'clock to-day. This afternoon early I am to leave for Granada.

I remain, with high respect and consideration, your obedient servant,

JOHN B. KERR.

Mr. Kerr to Mr. Castillon.

LEGATION OF THE UNITED STATES OF AMERICA,
Managua, July 30, 1852.

The undersigned, chargé d'affaires of the United States, has the honor to acknowledge the receipt of the communication of the honorable Mr. Castillon, minister of foreign relations in Nicaragua, just handed to him, with a request for the transmission to Washington of certain modifications of the basis of settlement between Nicaragua and Costa Rica, proposed by the joint councils of the United States and Great Britain.

It might prove a source of future embarrassment to all parties if the fact were disguised that the questions now at issue are no longer to be narrowed down to mere polemics, interminable from their very nature and past experience, and not at all calculated to allay the pride and prejudice of a quarter of a century in regard to the territorial limits between these conterminous States in Central America. No one can know better than the honorable Mr. Castillon how utterly groundless all hopes of conciliation and compromise must prove, after abortive efforts so long at adjustment, under crimination and recrimination between these respective governments and people professing the same holy religion, and enjoying the same language and the same laws.

The paper which the undersigned had the honor to communicate from the city of Leon on the 23d ultimo was advisory and recommendatory; and the honest truth, never now at war with diplomatic etiquette, is, that the commercial world, generally, is looking to the noble lake and waters of Nicaragua for such a right of way as may be exercised in perfect harmony with the true dignity of this State under international rules and regulations. In regard to the impartial arbiter to which the decree of the honorable the senate and chamber of representatives refers, let the undersigned, in all sincerity, ask the honorable Mr. Castillon, where better and more assuredly could it be found than in the two greatest of maritime nations, whose words of advice and recommendation have just been set aside, though acting from no selfish purposes whatever, and in the name and behalf of the world at large.

The undersigned, in deference to the wishes of the Nicaraguan government, expressed in the most solemn form known to her constitution, will at once forward the decree of the legislative body, negating the proposed arrangement suggested for her onward progress, as also these modifications thus ripened and matured by the executive in virtue of his powers.

The undersigned must take the occasion, however, to express his earnest conviction that the latter paper, after so pointed a refusal by the legislative branch of the government, will not in the slightest degree stay any such prompt action by the government of the United States as may be needed to advance the great enterprise of inter-oceanic communication, to which it stands as one of the sponsors.

The views and feelings of another zealous and sincere sponsor, (so

beautifully and eloquently expressed by the right honorable the Earl of Derby, as the British prime minister,) may not be out of place in the present connexion, as essential, indeed, to disabuse the public mind here in Nicaragua of false impressions just now rife in regard to presumed changes in the policy of England. On a very recent occasion, this distinguished peer made the following reference to the condition of things on this isthmus :

“ At this moment I may mention, as an illustration, that we are engaged with a great and powerful neighbor, whose military prowess all the world acknowledges, (and of whose prowess we have ourselves had great experience,) not in those hostile armaments which have formerly deluged the world in blood, but we are engaged in a united effort, by united councils, in endeavoring by peaceful negotiations to extend, not for our own individual benefit, but for the benefit of the world at large, the sphere of peaceful commerce through the interior of the vast continent of America. Our plenipotentiaries are, indeed, different in person, but the instructions upon which they proceed, and the spirit by which they are animated, are essentially and unequivocally the same.”

Deeply sensible of the comity and kindness at all times extended to him, the undersigned renews to the honorable Mr. Castillon the assurances of his respect and most distinguished consideration.

JOHN BOZMAN KERR.

Mr. Molina to Mr. Hunter.

LEGATION OF COSTA RICA,

New York, August 6, 1852.

SIR : I have the honor to accompany, herewith, a sealed despatch from the minister for foreign relations of Costa Rica to the honorable Secretary of State of the United States, which I have been charged to deliver.

Official engagements in this city preventing my performing that duty personally without delay, I have been induced to employ the present channel, as the simplest manner to effect the early transmission of that communication.

In so doing, I am instructed to reiterate my government's confident hope that, in the final adjustment of the treaty to be signed between Costa Rica and Nicaragua, the governments of the United States and Great Britain will exercise their friendly influence to have such provisions inserted in it as may lessen the sacrifices and secure the interests of Costa Rica.

Accept the renewal of my highest regards, with which I remain, sir, your most obedient, humble servant,

F. MOLINA.

WILLIAM HUNTER, Esq.,

Acting Secretary of State, Washington.

Mr. Webster to Mr. Molina.

DEPARTMENT OF STATE,
Washington, August 12, 1852.

SIR: I have the honor to acknowledge the receipt of your note of the 6th instant, accompanied by a sealed communication to this department from the minister for foreign affairs of Costa Rica.

In reply, I have the honor to inform you that your government may rely upon any friendly influence which it may be in the power of this government to exert, for the purpose of making the proposed convention with Nicaragua and Costa Rica acceptable to the latter.

I avail myself of this occasion, sir, to offer to you a renewed assurance of my very high consideration.

DANIEL WEBSTER.

Señor Don FELIPE MOLINA, &c., &c., &c.

Mr. Walsh to Mr. Webster.

NEW YORK, August 15, 1852.

SIR: I have the honor to inform you of my arrival here, yesterday, in the steamer Northern Light, from Greytown. I am unable to proceed at once to Washington, in consequence of illness. In Nicaragua I was attacked by fever, brought on by the unavoidable exposure and fatigue of travelling in that country, and am still suffering from it in a way that may render repose necessary for a few days. As soon as I can, I will report myself to you personally.

With great respect, your obedient servant,

ROBERT M. WALSH.

Hon. DANIEL WEBSTER,
Secretary of State.

No. 12.

Mr. Kerr to Mr. Webster.

[Extract.]

LEGATION OF THE UNITED STATES OF AMERICA,
Leon de Nicaragua, September 2, 1852.

SIR: * * * * My official note of the 31st of July, in the accompaniments to No. 11, has drawn a reply which must preclude any future reference to documentary or other evidence, by which it could be pretended that the honor of the United States had been compromised through pledges of protection to Nicaragua. Mr. Castillon dwelt with much earnestness on the existence of such evidence, and, in Mr. Walsh's presence, the like idea was subsequently reiterated by

the minister of finance, Mr. Rocha, and echoed back by the director. Mr. Castillon, however, has thought proper to protest against such inferences from his expressions, or those of the director; and the government of the United States is officially absolved.

The Guatemala Gazette, to which I would call your attention, contains much balderdash from a recent member of the Nicaraguan legislature, evidently desirous of making capital for himself out of the Guanacaste question. It will serve as an index to the style of argument in regard to the basis of settlement recommended by Mr. Crampton and yourself.

Nothing definitive has been heard from the city of Tequziquilpa, where the constituent national assembly is in session. A quorum was formed recently, after months of delay; and it is apparent that Honduras is the only one of the States which has no double dealing, under an affectation of zeal for nationality.

* * * * *

I have the honor to remain, with much respect and regard, your obedient servant,

JOHN BOZMAN KERR.

Mr. Castillon to Mr. Kerr.

[Translation.]

GOVERNMENT HOUSE,
Managua, August 16, 1852.

SIR: The undersigned has the honor to reply to the official letter of the honorable Mr. Kerr, chargé d'affaires of the United States to Nicaragua, dated on the 31st of July now last.

The undersigned does not recollect to have uttered to the honorable Mr. Kerr, either officially or confidentially, a sentiment from which he could deduce an intention to make any complaint in the name of the government of Nicaragua of the want of good faith on the part of the government of the United States in the recent convention adjusted at Washington with the British minister, relative to proposing bases for an arrangement between Costa Rica and Nicaragua on their territorial questions, and for the separation of Mosquito. That which, alone, the undersigned recollects to have said to the honorable Mr. Kerr, is, that the government of Nicaragua, in view of the bases enunciated, had come to the understanding that that of the American Union had proceeded, without knowledge of the case, in a business of such vital interest to this State, because, not only was a considerable portion of the possessions which Nicaragua believes to be fundamentally her own conceded to Costa Rica, but also great and important advantages to her commerce and navigation in the rivers and lakes of this State—advantages which Costa Rica herself did not believe she could attain without making the sacrifice of pecuniary indemnifications, which she had already offered, and which were refused—with the object of bringing her to those principles of justice she was under obligation to observe relative to the question of the Guanacaste district,

which that government has always eluded under protests not very justifiable.

The undersigned, in support of his assertions, referred to a memorial which he had written in London upon these questions, and other unpublished documents in the keeping of the government of Nicaragua.

As to the segregation of Mosquito, the undersigned also declared to you the regret it had caused to his government that that of the American Union had acceded to it, notwithstanding the grounds adduced by Nicaragua for refusing to recognise in the character of an independent State the hordes of Indian savages who inhabit that portion of territory originally called Mosquito, which the government of the undersigned had the right to expect would have been recognised by that of the American Union, in whose States principles have been proclaimed and adopted which, for identity of cause, of reason, of interest, and of object, the State of Nicaragua has maintained from the beginning of this question.

These were the only ideas expressed by the undersigned, in relation to this business, at the conference to which you are pleased to allude.

These were the very sentiments expressed by the director at the conversation which took place with Mr. Walsh, when he was introduced by you without previous announcement, or any of the formality of ceremonial; an annunciation which he made without emphasis, although with a tone of dignity not foreign to a governor who knows how to reconcile what is due to his honor, and the honor of the country which he governs, with the consideration and regard which he owes to those of other sovereign States, at the moment when Mr. Walsh declared, with a certain air of disrespect and menace, "That the principles of international law on which the director sustained the rights of Nicaragua were written in Vattel, and other authors of treaties; but that governments acted always as suited their interests and their power, and that the bases proposed by his government and that of Great Britain ought to have the effect of a definitive decision, since it was, as to them, a business brought to a close, notwithstanding any opposition on the part of that of Nicaragua."

The undersigned, in making this explanation to you, feels the deepest regret to perceive in your letter opinions which indicate a disposition little favorable to the consolidation of the relations of friendship and cordial understanding existent between the republics of the United States and Nicaragua; but the government of the undersigned believes, notwithstanding, that such disposition will readily be dissipated, and that once convinced of the sincerity of its sentiments, you will make them known to your august government, as well as the principles according to which it will become her to act in the negotiations relative to the territorial questions under discussion, so as to preserve to Nicaragua that which is due to her propositions, her justice, and her interests, which are considered entirely identified with the dignity, principles, and interests of the United States.

In fine, the undersigned requests you to accept the assurance of the high consideration and friendship with which he has the honor to be Mr. Kerr's very obedient, humble servant,

FRANCISCO CASTILLON.

Mr. Castillon to Mr. Kerr.

[Translation—Extract.]

GOVERNMENT HOUSE,
Managua, August 3, 1852.

SIR: * * * * * I must also here say to the honorable Mr. Kerr, that the memorial which he has transmitted in respect to the military detachment ordered to the "old castle," is not accurate.

The military force ordered to that point has no object hostile to Mr. Wiener; it has no other than to constitute the guard to be stationed at that point, to prevent the smuggling which is carried on to the prejudice of the State, by the company itself, and after having remonstrated with it, and protested against the establishment which was being formed there contrary to the reservations contained in article 27 of the contract of the 22d of September of the year 1849. My government would have congratulated itself, and would have congratulated Mr. Wiener, if, promptly leaving the castle, which is a military post, and an historic monument which the country should preserve, he should have erected his edifices at another of the many points which are to be found on the unoccupied and uncultivated margins of the San Juan. But you will comprehend that the rights of a State to the sites which it requires for objects of public interest and service are not to be postponed, nor ceded, on the mere consideration that that establishment is intended to facilitate the transit from one sea to the other.

The consequences which may follow the occupation of the castle by a military force, which may obstruct Mr. Wiener in the free use of this building, will bear upon the company itself, which, not even in the way of courtesy, treated with the government to have possession of that point; but, by giving too broad a construction to the 27th article referred to, makes to itself a donation of eight sections of ground, on both banks of the river, at its own selection—a grant which, even if it gave the right to indicate the sites at which each section is to be surveyed, does not give to it the privilege to reduce them into possession without the intervention of the government to which it belongs to select, as well the points which it has need of for fortifications and construction of buildings, as to name commissioners for the demarcation of each section.

But these and other questions which turn on the original contract of the 22d of September, on its modifications, and on the last agreement of the 19th of August of the year 1851, will undoubtedly be arranged with the company itself, without giving them more political importance than that which the natural course of events and of circumstances may suggest to the government of Nicaragua.

Finally, this government being convinced of the need for a consular agent of the United States at the port of San Juan del Sur, directs me to repeat to you what I said by its order in my despatch of 21st July last—that is to say, it will confirm any provision for a con-

sul which your government may please to make of any other person having the confidence of that government, who is free from all obligation or committal to Nicaragua.

My government hopes you will understand, through these explanations, that nothing is more settled than its desire to bind and cement the relations of friendship and good understanding which exist between the republics of the United States and Nicaragua, as well as to set at a distance any cause which might change them, or lead to disagreement between the two governments.

In this manner the director has instructed me to reply to your respected communication here referred to ; and, in making this assurance, I am honored in repeating the perfect demonstration of respect and esteem with which I am accustomed to subscribe myself, sir, your obedient, humble servant,

FRANCISCO CASTILLON.

Mr. Marcoleta to Mr. Conrad.

[Translation.]

NEW YORK, *October 16, 1852.*

The undersigned, envoy extraordinary and minister plenipotentiary of the republic of Nicaragua, has the honor to inform the Hon. Mr. Conrad, Secretary of State of the American Union, that he has received orders from his government to propose to the government of the Union certain modifications to the basis signed at Washington, on the 30th of last April, by the Hon. Daniel Webster and the minister of her Britannic Majesty.

Consequently, the undersigned requests the Hon. Mr. Conrad that he will be pleased to inform him whether his government is disposed to listen to the propositions of Nicaragua, and to proceed to a new discussion upon matters which are of vital interest to both States.

The undersigned avails himself of this opportunity, and has the honor of tendering to the Hon. Mr. Conrad the assurance of his high and distinguished consideration.

J. DE MARCOLETA.

Hon. Mr. CONRAD,
Acting Secretary of State.

No. 13.

Mr. Kerr to Mr. Webster.

[Extract.]

LEGATION OF THE UNITED STATES OF AMERICA,
Leon de Nicaragua, October 27, 1852.

SIR: * * * Coquetting had commenced between the Nicaraguans and some few of the townsfolk at San Juan del Norte. One hundred and fifty men were to be sent to the fort of San Carlos ; but they must

prefer their present position as a free town to anything that Nicaragua could offer in exchange.

Had such a scheme succeeded, the Granada party would have claimed the dictatorship for General Fucto Chamorro ; and the small force received as mere police would, in a bulletin extraordinary, have achieved a triumph over the United States and England combined. The *statu quo* should be insisted upon till these two States can settle their boundary difficulties. Any precipitancy at San Juan del Norte would greatly embarrass future negotiations. I have secured myself from chances of misconstruction by the most guarded correspondence at that point ; and, in fact, as facilities are here, San Juan del Norte is far more removed from us than from you in Washington. The route to California carries the Americans through the centre of the broad lake to Virgin bay and San Juan del Sur, so far out of the regular line to Granada, that letters and papers seldom reach here under two months. The duplicate of No. 15 was handed to me by a Granada merchant, immediately from New York, and despatch No. 14 has not reached me. * * * *

I have the honor to remain, with high respect and regard, your obedient servant,

JOHN BOZMAN KERR.

Mr. Conrad to Mr. Marcoleta.

DEPARTMENT OF STATE,

Washington, October 28, 1852.

SIR: Your note of the 16th instant has been received.

The President directs me to say, in reply, that, at the solicitation of the republic of Nicaragua, this government was induced to interpose its good offices in order to bring about, if possible, a settlement of the long-pending territorial difficulties between Great Britain and the so-called Mosquito nation and herself. It succeeded in obtaining the assent of Great Britain to an arrangement which, although it did not award to Nicaragua all the territory she claimed, awarded to her much more than Great Britain had ever before consented to admit to belong to her.

This arrangement, however, whether advantageous or not to Nicaragua, was only recommended to her, leaving it to her discretion to adopt or reject it.

But not satisfied with rejecting it, (which they had a perfect right to do,) the legislative assembly of Nicaragua saw fit "solemnly to protest against all foreign interference in the affairs of their government." Had this censure, as unjust as it was unexpected, emanated from a more powerful nation, this government would, from a proper sense of what was due to its own dignity, have declined any further connexion with the subject. But, as it is unwilling that the important interests involved in this controversy should be compromised by what it is inclined to consider an inconsiderate resolve of the govern-

ment of Nicaragua, I am directed to say that any propositions emanating from that government will be received and respectfully considered.

I avail myself of this opportunity to renew to you, sir, the assurance of my high consideration.

C. M. CONRAD,
Acting Secretary.

Señor DON JOSE DE MARCOLETA, &c., &c., &c.

Mr. Marcoleta to Mr. Conrad.

[Translation.]

LEGATION OF NICARAGUA,
New York, November 2, 1852.

MY DEAR SIR: The undersigned, envoy extraordinary and minister plenipotentiary of the republic of Nicaragua, has had the honor to receive the despatch which the Hon. Mr. Conrad, acting Secretary of State, has been pleased to address him, under date of the 28th of October last, in reply to his communication of the 16th of the same month.

The aforesaid despatch contains two essential points:

The first relates to the terms in which the legislative assembly of Nicaragua refused its sanction to the bases signed in Washington on the 30th of last April, by the Hon. Daniel Webster, of national and civic memory, and her Britannic Majesty's representative to the United States of North America.

The second merely goes to show that the President, with that kindness which is characteristic of him, and in consideration of the vital interests that are involved in the territorial questions between Great Britain, Nicaragua, and Costa Rica, is disposed to listen to, and to take into consideration, the propositions that may be made by the government of Nicaragua.

With regard to the first point, the undersigned may be allowed to call the attention of the honorable acting Secretary of State to the motives which actuated the members of the legislative assembly of Nicaragua in issuing the decree of the 19th of July, 1852.

First of all, although it is true that in the preamble to the aforesaid bases it was laid down that the latter were merely recommendatory, yet the chambers did not fail to notice that, in the last article, it was intimated to the government that on such bases being rejected, or failing to respond to them in proper time, the United States and Great Britain would, by themselves, adopt such measures as they might think necessary, in order properly to carry out the stipulations contained in the treaty concluded between the United States and England on the 19th of April, 1850.

The legislative assembly of Nicaragua saw nothing in this clause but a contradiction and a threat.

A contradiction, because the assembly had fully in mind the first article, to which reference was made, and in which both England and the United States, according to the text, renounced all ideas of occupation, every kind of jurisdiction and protection in Central America, especially as regarded Costa Rica, Nicaragua, and Mosquito ; and because it saw, notwithstanding such binding clauses, that Great Britain was assuming the right of a protective power, in order to treat in the name of the protected party, the Mosquito chief ; it appearing to the legislative assembly that the government of the American Union might very well have avoided the interference of Great Britain in these questions, by merely asking and exacting from her a faithful, precise, and strict adherence to the article mentioned in the treaty aforesaid. Nor did the general assembly think that the right of conquest, which England arrogated to herself to the port of San Juan, could, in any way, be admitted without setting up and establishing a precedent which would be pernicious to the tranquillity, security, and independence of nations. England was fully at peace with Nicaragua when the former took forcible possession of said port, for the restitution of which a price is demanded of the latter, in the bases, which is both unjust, excessive, and exorbitant.

The assembly could not help wondering, at the same time, at the kind of imperative manner in which the government was asked to give an immediate answer, knowing that the first despatch which its plenipotentiary in Washington had the honor of addressing to the Department of State on the 24th of February, 1851—a despatch containing and treating of a question of vital interest to Nicaragua—had remained unanswered ; and that a reply to the same had always been evaded, under various pretexts, for a period of seventeen months ; and that this reply was still waited for at the present day.

A threat, because the assembly looked upon the articles contained in the bases aforesaid as offensive and aggressive in many of their provisions to the national sovereignty ; articles and provisions totally and diametrically opposed to and at variance with the instructions which the assembly itself had examined, discussed, and approved ; and recommended the government to transmit to its plenipotentiary at Washington, who received them in due time, the same instructions which called forth the protest the undersigned plenipotentiary found himself compelled to address to the honorable Secretary of State, Mr. Daniel Webster.

To these, and other considerations of various kinds, may be added the conduct pursued by Mr. Walsh, who neither presented nor recommended, but mentioned, the bases to the supreme magistrate of the State, in whose official residence he introduced himself without being previously announced ; without showing afterwards, either in his language or his deportment, the respect due to the representative of the supreme magistracy ; breaking out into threats unbecoming the place where he was, and to his own self-respect, and the decorum due to the government which had sent him there as commissioner, and to the chief magistrate of the State ; all of which conduct, standing out in singular contrast with the courtesy, circumspection, and amenity of Mr. Wyke, the British consul, who was intrusted with a similar mis-

sion, was the cause of the unpalatable truths which Mr. Walsh heard from the lips of the supreme director of the State.

In reviewing the circumstances above stated, it is not the purpose of the undersigned to indulge in any kind of recrimination; his object is simply to show to the honorable acting Secretary of State that the terms, and the language in which the legislative decree of the 19th of July last was conceived, were solely the result of a fatal combination of circumstances, which the government of Nicaragua regrets as much as that of the American Union, but which, nevertheless, the irresistible force of public opinion, of the duties incumbent upon the legislative assembly and the executive power, could not otherwise than have compelled the adoption of, as most conformable to the interests and rights which each of the powers aforesaid is respectively called upon to defend and protect.

The undersigned, being convinced that the foregoing statement will suffice to mitigate, and certainly do away with the impression produced on the minds of the President and of the honorable Secretary of State, relative to the conduct which an imperative sense of duty on this occasion compelled Nicaragua to pursue, and reiterating, at the same time, to the honorable acting Secretary of State, the sincere and ardent wishes of Nicaragua to cultivate and to continue on the best and most cordial friendly terms with the government of the American Union, he will now have the honor of explaining to him the means which Nicaragua considers best calculated to secure a favorable result, and to put an end at once to the existing state of things with the least possible detriment to the parties interested.

The government of Nicaragua thinks, and has the honor at the same time to submit to the American government, that the 1st and 2d articles of the bases of the 30th of April last may, with propriety, be amended; and with this view it begs to suggest, and is ready to adopt, a new wording, modified as follows:

"The Mosquito Indians, and the territory known by that name, including the port of San Juan del Norte, shall in future, and for all times, be incorporated with, and re-annexed to, the State of Nicaragua, in which they shall enjoy the same rights, and be subject to the same obligations, as the rest of the inhabitants of the State, said territory being considered as one of its departments; and, as such, it will contribute representatives and senators to the legislative chambers, in the form and on the principles specified by special law. The commerce of said territory with the other portions of the State shall be entirely free and open, both by land and water, for the navigation of vessels and the transit of vehicles, which shall enjoy the utmost security.

"Nicaragua binds herself to grant to the Mosquito Indians, by way of indemnification, in consequence of the improvements made in the port of San Juan del Norte—

"1st. Four per cent. on the net proceeds of said port for a period of five years; this sum to be paid annually by the collector of the port into the hands of the municipal authorities hereafter to be established there, in order that the same may be invested in objects of common advantage to those inhabitants.

"2d. Nicaragua shall assign an equitable annuity for life to the *cacique* or chief of the Mosquitos.

"3d. Nicaragua will pledge herself to recognise, and to respect as lawful, the grants of lands that may have been made since the 1st of January, 1848, until the present day, by the authorities of the Mosquito territory, with the exception of those grants that are in opposition to the grants of lands made by the Spanish government, by the federal government of Central America, and by the government of Nicaragua, and those grants which clash with the privileges of the canal companies accessory to the way of transit, or when the lands thus granted are located at those points which the State wants for building forts, custom-houses, arsenals, and other public edifices, which points shall remain at the disposal of said State.

"The port of San Juan shall preserve this, its original appellation; and the public municipal authority shall be exercised in the name of the State, in the same manner as in all the other parts of the territory incorporated with and annexed to Nicaragua in virtue of the present treaty.

"The republic of Nicaragua, with a view of facilitating the construction of the great inter-oceanic canal on the terms stipulated in the contract of September 22, 1849, binds herself not to construct, nor to allow the construction of, any work which might interfere with the labors of the canal, or the navigation and entrance of the ports, rivers, and lakes, where it may be necessary to carry on those works of inter-oceanic communication; it being well understood that the exclusive right granted to the company accessory to the transit enterprise, and the power which is conferred upon the same by the 1st article of the agreement of August 19, 1851, is not to exceed the bounds and objects specified in the 30th article of the original contract of September 22, 1849, the scope of which is to promote the speedy construction of the canal, in case the latter should not be practicable, as it has been stated to the company; which company must strictly submit to the provisions of said article 30th, agreeably to the stipulations contained in the 9th article of agreement of August 19, 1851, alluded to.

"In case the inter-oceanic communication should be effected, either wholly or in part, through the territory of Nicaragua, the United States and England shall become respectively bound to unite their efforts to those of the government of Nicaragua in order to guaranty the neutrality of this important way of communication, with a view of protecting the sovereignty of the State, and the free transit against all seizure or confiscation, on the same terms, and in all such cases, as are specified in the 5th article of the treaty of April 19, 1850, adjusted between the United States and Great Britain.

"And with a view of fixing the distance within which vessels of all nations must be exempt from blockade, detention, or capture, by any of the belligerent parties, in case of war, this distance shall be declared to extend for thirty nautical miles, from the water-mark at low tide, at both extremities of the canal.

"It being desirous that no time should be lost in beginning the construction of said canal, the governments of the United States, Great Britain, and Nicaragua, shall agree, that in case the company,

recipient of the grant, should not succeed, within the term of one year, counting from the date of the ratification of the treaty, in obtaining the subscription of a capital necessary and sufficient for executing the work, or in case of there being any other insurmountable natural impediment to prevent the construction of the same, in the same manner as in regard to the construction of a railroad, in such case there shall be no obligation on the part of Nicaragua to observe and abide by said contract, and the company shall lose the privilege.

"The government of Nicaragua, having consulted that of the United States and of Great Britain, shall grant the privilege to any other company, upon such conditions and stipulations as shall be most suitable for carrying out so stupendous a project.

"The transit company shall enjoy the same protection as was guaranteed in the treaty of April 19, 1850, to the Atlantic-Pacific Canal Company, provided that the former confines itself to the object of promoting and facilitating the construction of the canal, on the same terms as those stipulated in the 30th article of the original contract of September 22, 1849, which shall be inviolably observed, in conformity with the provisions of the 9th article of the agreement of August 19, 1851; it being understood that any other article in said agreement, tending to alter the sense of the above, shall be considered as null, of no value nor effect, and the power previously granted to the company shall cease."

Such are the modifications which the undersigned has been directed to suggest to the government of the United States, concerning the Mosquito question, the port of San Juan, and the canal and transit companies. Those which relate to the two companies, however, are not definite. This is another proof that the government of Nicaragua is disposed to favor, in all that depends upon itself, the construction of an inter-oceanic communication, without intending to constitute itself the protector of a new speculation on the part of any number of persons or companies, not actuated by a similar desire to carry out a work so advantageous to the commerce of the world.

The canal and transit companies are now in a different position from that which they occupied at first, before they had invited European capitalists to take part in this gigantic work; and not being able to command at present, from all appearances, the necessary capital, nor the means to carry out the undertaking by themselves, they would want to obtain some modifications in the original contract—modifications to which the government of Nicaragua cannot pledge itself *a priori*, before having seriously considered the subject, as well as consulted the great powers friendly to said government.

The modifications, therefore, that may be required by said companies, are henceforth subjected to others, according to the condition in which said companies find themselves, or according to the greater or lesser guaranties and probabilities which they may offer, of being able to consummate an undertaking which shall be entitled to general approbation.

Moreover, according to the legal opinion of that worthy and distinguished jurist, Daniel Lord, of New York, the conduct and actual management of these companies has given rise to well-founded suspi-

cions, in consequence of the excesses and irregularities committed by their agents in Nicaragua, the tone and complexion of their official communications, and especially on account of their having evaded, under specious pretexts, the performance of many of the obligations to which they were pledged by the contracts of April 22, 1849, and of August 19, 1851.

With regard to the territorial boundaries between Nicaragua and Costa Rica, although Nicaragua is of opinion that this is a family question, which ought to be settled between its own members, avoiding thereby those rocks upon which all the efforts that have been made, until now, for the settlement of the main question have been wrecked; which have, at the same time, served as an obstacle against the consummation of the splendid project of peace and good harmony between all, and for the establishment of a canal on the isthmus of Nicaragua; yet the government, being desirous to give some evidence of the wishes by which it is actuated, to secure a good understanding between two sister republics, comes forward to manifest its solicitude for the mutual welfare of both, without jeopardizing, however, the important interests which said government is bound to protect and to defend.

'And if by chance the government of the United States thinks it proper that the settlement of this question should henceforth be resolved and included in some treaty which circumstances may give occasion for, Nicaragua makes the following propositions:

"The boundaries between Nicaragua and Costa Rica shall be the same as were formerly comprised by the old province of Nicaragua, to wit: from the *Rio del Salto*, in the Pacific, following a diagonal line towards the interior, to the *Rio Paritina*, in the Atlantic.

"At the same time Nicaragua pledges herself that the navigation of those rivers which are located within the boundaries of Nicaragua, from the point where they begin to be navigable, as well as the waters of the lake, lakes, and all navigable waters generally, shall be entirely free and common to the subjects of each State, without any restriction, nor any special condition favoring one party more than the other; it being understood that the citizens of Costa Rica, as well as those of Nicaragua, shall be subject to the only limitation established by the 23d article of the contract concluded with the canal company on the 22d of September, 1849, and that they shall conform with all the regulations concerning the navigation law and the other laws of the State."

Costa Rica shall, moreover, enjoy the following privileges:

"1. Entire exemption from importation duties for the port of San Juan during a period of ten years.

"2. Absolute exemption, for all time, from duties on exported articles of her own produce and manufacture for said port.

"3. Equal immunity and freedom, for all time, to navigate the *Rio Serapiquí*, with the obligation of constructing, at her own expense, (Costa Rica's) the works necessary to render said river navigable, and to preserve it in the condition it will be after the works necessary for such purpose shall have been executed.

"4. To establish at the confluence of the rivers San Juan and Sera-

pique; or at any other point she may think proper, custom-houses, stores, warehouses, and revenue stations.

"5. The privilege empowering her subjects to keep, in the port of San Juan, warehouses for depositing such merchandise as they may have to import through the interior of her territory, for a period of fifteen years; these points to be adjusted and agreed upon by means of a special convention, which shall, at the same time, designate the mode and the manner in which the boundaries of the frontier between the two States have to be established."

The government of Nicaragua hopes that the foregoing modifications and propositions, which embrace the various points in question, will meet with the approbation of the government of the United States, and that, with the zeal and interest it has always manifested for good harmony and friendly relations between the parties interested, it will contribute to the acceptance, on the part of all, of an arrangement which Nicaragua considers the most just and equitable for the common and general interests, obtaining in this manner, and very briefly, the results which are desired.

The undersigned begs the honorable acting Secretary of State that he will be pleased to submit the contents of this despatch to the president of the republic, and at the same time he avails himself of this new opportunity to renew to him the assurances of his high and distinguished consideration.

J. DE MARCOLETA.

Hon. Mr. CONRAD,

Acting Secretary of State, Washington.

Mr. Molina to Mr. Everett.

LEGATION OF COSTA RICA,
Washington, November 11, 1852.

The undersigned, minister of Costa Rica, has the honor of addressing himself to the honorable Secretary of State, for the purpose of calling his attention to the unfinished state of the negotiations set on foot by this government in the month of last April, respecting the settlement of the territorial differences and other matters pending between the State of Nicaragua and the republic of Costa Rica, and between the former State and the Mosquito Indians.

Mr. Everett is, no doubt, aware that his illustrious and lamented predecessor in office, the honorable Daniel Webster, in concert with Mr. Crampton, her Britannic Majesty's minister to this government, and with a view of facilitating the construction of the contemplated ship-canal, took pains to draw a plan of adjustment in as fair and equitable terms as it was possible, under existing circumstances, to devise.

That project having been agreed upon and signed on the 30th of April, it was to be recommended to the immediate and earnest consideration of the governments of Costa Rica and Nicaragua respect

ively, by means of special agents sent there for the purpose, as it appeared desirable to insure their prompt decision. Mr. Walsh was accordingly appointed, on the part of the United States, and was authorized to communicate on the subject with the governments aforesaid, acting in connexion with Mr. Wyke, the newly appointed British consul-general to Central America, then on his way to his future sphere of action.

For greater despatch, the two commissioners were conveyed to their destination in an American man-of-war, showing thereby that there was a determination to bring matters to a speedy issue.

The commissioners directed their course first to San José, where they met the cordial welcome that the nature of their errand and their personal merits entitled them to expect.

The government of Costa Rica, however, having fully considered the propositions presented by them, could not fail to find strong objections in regard to some of the arrangements contemplated. The direct advantages of the inter-oceanic communication were intended by these arrangements to accrue exclusively to Nicaragua, as long as the company's charters lasted; the boundary of Costa Rica was to be removed from the northernmost branch of the river San Juan to the Colorado branch; the Atlantic-Pacific Ship Canal Company was to be allowed to locate on the Costa Rican side of the river San Juan certain sections of land that Nicaragua had granted to it, in defiance of the sovereignty of Costa Rica over those territories.

It is a well-known fact, that neither the government of Nicaragua nor the company to which the already mentioned privileges had been granted had, in their mutual transactions, paid any regard to the claims of Costa Rica, as if the latter republic had no right to be a party in the affair; and it was natural, therefore, for the government of Costa Rica to feel itself aggrieved on the subject.

Nevertheless, desirous of removing any difficulties that might impede the success of the canal enterprise, on the conviction that it is always judicious to compromise matters in dispute, and from a sense of grateful regard for the powers that were thus exerting their kind mediation and proffering their advice, the government of Costa Rica gave, on the 22d of June, with the sanction of the legislature, an unqualified assent to the propositions recommended, confining itself to invoke the friendly offices of the mediating powers in order to obtain some slight modifications in favor of Costa Rica.

Nicaragua, on the other side, who had been the most favored party, by the provisions of the proposed adjustment, has shown quite a different disposition. The government of that country has rejected the project in a manner which, to say the least, deserves to be qualified as very inconsiderate; while the counter-propositions of the 29th of July, presented to the commissioners in that quarter, require no comment on the part of the undersigned; such propositions being nothing more than a demand that every point at issue should be settled according to the views of that government. This unsatisfactory result must have proved to the American cabinet that there is no hope of ever bringing that State to a correct appreciation of its position, interests, and duties.

In the meantime, Costa Rica stands in a false position, having pledged herself to abide by the opinion of the governments of the United States and Great Britain, as set forth in the propositions, without obtaining in exchange any security against the assumptions and encroachments of Nicaragua; the adoption of other means of self-defence being denied to her, whilst her rights are actually disregarded, and her interests deeply injured in various ways.

It seems to the undersigned that the governments of the United States and Great Britain are both pledged by the concluding words of the project to take a final action on the premises. Costa Rica, trusting on this declaration, did not hesitate to concur in their views.

The undersigned, therefore, in compliance with the repeated instructions he has received from his government, begs leave to call the attention of the honorable Secretary of State to the expediency and propriety of concluding a treaty between Costa Rica and the United States, according to the tenor of the propositions; Costa Rica, on one part, agreeing to convey, on her own and indisputable title, to the American Atlantic-Pacific Ship Canal Company the right of way, privileges of navigation, and sections of land; all of which concessions that company is in need of at present, in order to legitimate the tenure of its charters: and the United States, on the other part, engaging to support Costa Rica in the maintenance of her boundaries and rights against the assumptions of Nicaragua.

This proceeding appears to the undersigned to be the only course now open for both parties, in order to terminate this affair, which has been kept in suspense since Mr. Walsh's return, three months ago. Any further attempts at negotiation with Nicaragua would, no doubt, result in fresh disappointments.

The minister of Costa Rica earnestly and respectfully requests Mr. Everett's early attention to the contents of this note, trusting that the conduct of Costa Rica in the premises has been duly appreciated by the American government.

And he has the honor of renewing to Mr. Everett the assurance of his very distinguished consideration, with which he begs to remain his most obedient, humble servant,

F. MOLINA.

Hon. EDWARD EVERETT,

Secretary of State of the United States.

MR. MOLINA'S PROJECT FOR THE SETTLEMENT OF CENTRAL AMERICAN AFFAIRS.

Suggestions as to the course that may be adopted for the settlement of the Central American affairs.

Firstly. A treaty can be signed between the United States and Costa Rica, as I have proposed, providing the maintenance of the state of things contemplated by the propositions of April, as regards Costa Rica and Nicaragua and the canal company; such state of things to be considered as a finality.

Secondly. Should this plan not seem advisable, a treaty could be concluded between the United States and Costa Rica, stipulating the maintenance of the contemplated arrangements as regards Costa Rica, Nicaragua, and the canal company, only as a temporary settlement, to be kept until such a time as the governments of Costa Rica and Nicaragua shall effect a peaceful adjustment of their differences, either by a direct agreement or through arbitration: provided that these temporary settlements shall not prejudice any of the claims of the contending parties, which claims shall be discussed and adjudicated upon in their full extent and in all their bearings.

Thirdly. With reference to the Mosquito part of the affair, should it appear advisable to transfer Greytown to Costa Rica, this republic will accept the transfer on the terms proposed to the advantage of the Mosquito Indians; granting likewise municipal privileges to the inhabitants of that port, and a perfect freedom of trade. Costa Rica would be willing, likewise, to hold that place only as a kind of trust, until such a time as Nicaragua shall give its acquiescence on the same conditions, and reimburse Costa Rica for the outlays which she would have made in order to pay the indemnity to the Mosquito Indians, or for other objects regarding the possession of that port.

WASHINGTON, *November 17, 1852.*

Mr. Walsh to Mr. Everett.

[Extracts.]

WASHINGTON, *November 19, 1852.*

SIR: I have had the honor to receive your communication of yesterday, enclosing an extract from a note of the minister of Nicaragua, in which I am accused of grossly improper conduct towards the government of that country. I at once pronounce the accusation to be false.

* * * * *

After accomplishing my mission to Costa Rica, I proceeded, in pursuance of my instructions, to Managua, for the purpose of getting any despatches which our chargé d'affaires might wish to send by me to the United States. *Before my arrival there*, the propositions of Great Britain and the United States, for the settlement of boundaries, had been rejected by the government of Nicaragua, in a way that indicated feelings of great irritation. I remained a few days in Managua, to give Mr. Kerr time to prepare his despatches, and deemed it proper, whilst there, to pay my personal respects to the minister of foreign affairs. Accordingly, I called upon him in company with Mr. Kerr, by whom I was introduced in due form. In the same apartment with him were the president and two other ministers of state; and to them, also, I was presented, although my visit was only meant for Mr. Castillon. After a few complimentary allusions to the beauty of their country, I said that, although I held no official position in regard to them, and had, therefore, no right to speak to them on official matters,

yet I hoped they would permit me to express my regret at not being able to take to the United States a favorable answer from them to the propositions, such as had been given by the government of Costa Rica. This led to a conversation on the subject of the treaty, in which, as they seemed disposed to carry it on, I endeavored, to the best of my ability, to make them sensible of the mistake they had committed in refusing the propositions, by representing to them the benefits which, in my opinion, would accrue from their acceptance, and the evils which would flow from their rejection.

As I was talking merely as a private individual, I thought myself free to speak more unreservedly than, perhaps, would have been "diplomatic," if any official relations between us had existed. This fact they must have perfectly understood; and the charge, therefore, of "neither presenting nor recommending, but mentioning the bases," is simply absurd, as far as the non-presentation of those bases is concerned, I having, as they well knew, no authority to present them: as to the non-recommendation of them, it is absolutely false, for I urged every argument in their favor that could be employed. To the next charge, that of "introducing myself to the supreme magistrate without being previously announced," the foregoing account of my visit is an answer quite sufficient to show how contemptible it is. Equally false is the charge that I broke out into threats, or showed disrespect in either language or deportment. If any one were obnoxious to the imputation of unbecoming behavior, it would be the president himself, in the remarks that he ventured to make about the government of the United States, which he accused of breach of faith in its conduct towards Nicaragua. That my indignation was aroused by this accusation, and that I replied to it with emphasis, I freely avow. I should indeed have been wanting in "self-respect," and in the respect due to my government, if I had not done so; but that I went a step beyond the limits of decorum, I deny. My language might, with all propriety, have been more energetic even than it was, in repelling the unwarrantable remarks on this head of both the president and the ministers. An idea of them may be derived from the fact that Mr. Kerr deemed it his duty to address a note to the minister of foreign affairs, soon after the conversation, asking for the evidence on which they were based, no answer to which had been given up to the time of my departure. I presume that "the unpalatable truths" which it is said that I heard "from the lips of the supreme director of the State," were these aspersions on the government of the Union, as I can recollect nothing else that was uttered to which the phrase can refer.

The truth is, sir, that the government of Nicaragua was in very angry mood against that of the United States. It had been led to believe that our government would sustain its pretensions in every way, and its irritation was great on discovering its mistake. *Conflata magnâ invidiâ, seu bene, seu male, gesta premunt.* The good understanding between the American and British cabinets was unpalatable to it in the extreme, giving, as it did, a death-blow to its hopes of profiting by the rivalry of the two powers. It was also engaged in vexatious disputes with the transit company; and not long before my arrival serious difficulties had occurred with the American residents

in the town of Granada. The idea, moreover, of yielding ought to Costa Rica, hating that country as it does for its immense superiority in all that renders a nation respectable and prosperous, was more exasperating even than the loss of the most valuable territories and privileges. It would, indeed, be matter of deep regret if our government had in any way abetted its enmity to the Costa Ricans, who, by their industry, integrity, and progress, are doing credit to republican institutions. * * * *

I beg pardon for trespassing at such length upon your patience, but I am anxious to remove at once from your mind the slightest suspicion that I could be guilty of such conduct as is charged. I have been many years in the diplomatic service of the country, and this is the first time that ought to my disparagement has been placed on the files of the Department of State ; whilst I might adduce various testimonials on record there of the manner in which I have discharged my duties, as evidence of the improbability of guilt in the present instance. * * * Nevertheless, as Mr. Kerr was present at the interview, I respectfully request that you will send him copies of the accusation against me, and my reply, in order that his testimony as to what passed may be obtained.

I have the honor to be, sir, with great respect, your obedient servant,

ROBERT M. WALSH.

Hon. EDWARD EVERETT,
Secretary of State.

Mr. Kerr to the Secretary of State.

[Extract.]

[No. 14.]

LEGATION OF THE UNITED STATES OF AMERICA,
Leon de Nicaragua, January 13, 1853.

SIR: * * * * * Guatemala and Costa Rica boldly avow that they intend to remain as they are, distinct republics ; and Salvador, with actual revenues and available resources, through the important seaport in the gulf of Fonseca—the entrepot, in fact, for the whole country—must necessarily be trammelled just now by a political connexion with States so unsettled as Honduras and Nicaragua. This sentiment is deeply fixed in the minds of the intelligent men of San Salvador, while the importance of nationality is understood and appreciated by all classes of persons.

In Nicaragua and Honduras there is no heartfelt reverence for the principle, and, with much more of bluster and pretence, it has now become a mere juggle of state to cozen others.

The idea artfully disseminated among these poor people is, that England, in fear and jealousy of their growing power and importance, stands in awe of a confederation, against which it is essential for her interests to be constantly aiming an envious missile.

The possession of the Belize by the English is a fixed fact, dating back many years as against Spain, and the Mosquito question has been a subject for discussion and negotiation for nearly two centuries. It is now questionable to whom this insalubrious sweep of country on the Atlantic belongs; while in view of our policy in regard to Indian tribes, the protectorate of Mosquito must be taken as a shift and subterfuge. Save at one or two points at the mouths of the rivers, it is along its whole extent a wilderness, unexplored and almost inaccessible. Held by Spain as a sort of trust-fund for the benefit of her transatlantic possessions when disposed to traffic, New Granada, to this day, makes continual claims for a sliver, notwithstanding the possession of the States proper of Central America. Guatemala and Costa Rica, seemingly indifferent to the discussion of these political questions, have been bending their energies to the development of trade. Such lukewarmness has been stamped with opprobrious epithets, and they are hated yet the more for their evident prosperity. There might now be just grounds of objection to the strong executive power as wielded by General Carrera, but it is in virtue of a constitutive act, behind which the leading men there hope to find a breathing time for progress, social as well as political. The influence of Guatemala is very marked. The city has its schools of law and medicine, and it has been the fashion to look upon it as the headquarters of learning and refinement. The government is not permitted, however, to enjoy the requisite repose, as there is a party in the mountains, under the name of Lucios, (from a chief executed as a felon some years ago,) infesting the highways and keeping up a constant state of alarm—so confident at times in strength and numbers as to have threatened the capital. These mountaineers, partially quelled by General Carrera, are supplied with arms and suborned, it is alleged, by Salvador and Honduras. Recently, matters have been brought to a crisis, as in the pursuit of some fugitives the Guatemala officers have not hesitated to cross the frontier. The peace policy of Salvador, under Mr. Dueñas, has led to something like accommodation, but the latest intelligence from Honduras is that a force has been called out by General Cabañas, the president, to meet fifteen hundred men now led by General Carrera. The fair at Esquipulas is at hand, and the Guatemala Gazette mentions General Carrera's departure in that direction with a small number of men. This may have been exaggerated for some political purpose in Honduras. There have been intimations given of the application of forcible measures to sustain nationality, in case the programme of the Tequizqualpa convention be not accepted. A somewhat notorious character—a sort of free companion, after the irregular practice of the middle ages, professing military skill—is now lying *perdu* at Managua. The presence of Guardiola in this State, trifling in itself, is yet particularly suspicious, as it indicates a settled apprehension of political turbulence on the part of the Nicaraguan government.

* * * * * I have the honor to be, with very distinguished consideration, sir, your most obedient, humble servant,

JOHN BOZMAN KERR.

Mr. Molina to Mr. Marcy.

LEGATION OF COSTA RICA,
Washington, September 26, 1853.

The undersigned, minister of Costa Rica, thinks it his duty to trespass once more upon the time of the honorable Secretary of State with reference to the long-pending negotiation for the adjustment of the differences between Costa Rica and Nicaragua, and of the questions concerning the Mosquito coast.

The government of Costa Rica apprehends that there is a disposition on the part of the American government to confine the negotiation with Great Britain, that Mr. Buchanan is going to take up again in London, to that part only which regards the Mosquito territory and the port of San Juan del Norte, without making any arrangement respecting the conflicting claims of Costa Rica and Nicaragua.

Heretofore the constant policy of this government has aimed at disposing of all those matters in one general settlement, in order to meet the interests of the several parties concerned ; and the undersigned, with due respect for the reasons that may have suggested a change of views, does not hesitate to say that, in the opinion of his government, the course formerly pursued would still be the most consistent with justice.

But should a different one be adopted, and supposing that, in consequence of an arrangement with England, the port of San Juan should be transferred to Nicaragua, the government of Costa Rica flatters itself that such a transfer shall not be made but under certain qualifications, with a view to preserve the claims of Costa Rica to one half of the same port, and to the other objects in litigation, unimpaired and unprejudiced.

Since the occupation of San Juan by the Mosquitos, on the 1st of January, 1848, the position of Costa Rica, as regards her differences with Nicaragua, has become a highly disadvantageous one, owing to the support that the pretensions of the latter republic have derived from the formation and establishment of the American companies holding the canal and transit charters, and from the opinions expressed in official documents in favor of Nicaragua by Mr. Squier, when he was chargé d'affaires of the United States in that country.

Hence it follows that the transfer of San Juan to Nicaragua, if done without any qualifications, would no longer be a restoration of the ancient state of things, when the contending parties (Costa Rica and Nicaragua) were both left to their own resources and titles, each of them unaided by foreign intervention ; but that, on the contrary, it would operate as the consecration of a new state of things decidedly injurious for one of the parties ; a result at variance with the avowed policy of this nation, which professes an equal friendship and impartial regard for each of the contending republics.

The deference shown by Costa Rica, on previous occasions, to the advice of the American government, and her readiness to terminate the existing difficulties, by any means in use among civilized nations, are circumstances which the undersigned trusts will always be remem-

bered as entitling that country to the regard and kind offices of the United States.

On this reliance, the undersigned ventures to request that Mr. Marcy will have the goodness to address particular instructions, if necessary, to the distinguished representative of the United States near her Britannic Majesty.

The undersigned has the honor to remain, with the highest consideration, Mr. Marcy's most obedient, humble servant,

F. MOLINA.

Hon. WILLIAM L. MARCY,

Secretary of State of the United States.

Mr. Marcy to Mr. Molina.

DEPARTMENT OF STATE,
Washington, October 14, 1853.

The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of Mr. Molina, envoy extraordinary and minister plenipotentiary of Costa Rica, of the 26th ultimo, and to assure him, in reply, that there is no just grounds for his apprehension that the rights of his government may be prejudiced or in any way disregarded by any arrangements which Mr. Buchanan may enter into with Great Britain in regard to the affairs of Central America. In several interviews with Mr. Molina, the undersigned has had occasion to explain to him the views of the government of the United States in regard to the questions of boundary and jurisdiction between the several States of Central America. This government is sincerely desirous that these States should settle these questions in an amicable manner among themselves.

Mr. Borland, the United States minister to Central America, is instructed to use his good offices in regard to any controversies that may exist among the Central American States, but at the same time he is cautioned against any interference in these matters which may be objectionable to any one of them.

The undersigned has the honor, &c.,

W. L. MARCY.

Señor Don FELIPE MOLINA, &c., &c., &c.

Mr. Marcoleta to Mr. Marcy.

[Translation.]

WASHINGTON, December 5, 1853.

On the 24th of February, 1851, the undersigned, envoy extraordinary and minister plenipotentiary of the republic of Nicaragua, had the honor of addressing a communication to the Hon. Mr. Webster, then Secretary of State, the contents and solution of which were, as

they are at the present time, of the greatest and utmost interest to the republic of Nicaragua.

The documents accompanying the communication aforesaid set forth the erroneous interpretation that, in the opinion of Nicaragua, Great Britain gave to the treaty of April 19, 1850—an interpretation which the British government maintained, or pretended, to be identical with that given to the said treaty by the government of the American Union.

The undersigned asked the honorable Secretary of State to have the kindness to inform him if such were, in fact, the deductions it had made with regard to the clauses and the spirit of said treaty. Circumstances, perhaps, prevented a reply from being given.

The undersigned is fully convinced that the Hon. W. L. Marcy appreciates, as well as the government of Nicaragua, the vital interest of the matter in question ; and he hopes, therefore, that he will have the goodness to take the same into proper consideration.

The undersigned avails himself of this opportunity to have the pleasure of renewing to the honorable Secretary of State the assurance of his highest and most distinguished consideration.

J. DE MARCOLETA.

Hon. W. L. MARCY,
Secretary of State.

Mr. Marcoleta to Mr. Marcy.

[Translation.]

LEGATION OF NICARAGUA,
Washington, December 6, 1853.

On the 2d of November, 1852, a communication was sent to the Department of State, setting forth and explaining the means by which the government of Nicaragua understood and wished that the restoration of the port of *San Juan del Norte*, and of the Mosquito territory, could be duly and fully carried out ; modifying, in the terms stated in that communication, the bases signed in Washington on the 30th of April of the same year, by the Hon. Daniel Webster, Secretary of State, and Mr. J. F. Crampton, her Britannic Majesty's minister ; bases which the senate and chamber of deputies of Nicaragua did not deem it proper to sanction nor to admit, in consequence of their being in direct opposition to the rights and interests of Nicaragua.

The undersigned, envoy extraordinary and minister plenipotentiary of Nicaragua, who had the honor of addressing the aforesaid communication to Hon. Daniel Webster, has now likewise the honor of calling the attention of the Hon. W. L. Marcy to the glaring evils and injuries which the actual state of things in relation to said questions originates and occasions to the interests of a sister republic, who, with the utmost confidence, has placed and still places in the hands of the American people the custody and defence of these dear and vital interests.

One of the evils which weigh most heavily upon the State is an enormous foreign debt, which the government of Nicaragua wishes to cancel; relying for that purpose upon one of the most fruitful sources of revenue which, before the British invasion, were wont to feed the public exchequer with the annual product of the port of San Juan.

It must not be understood by this, that the government contemplates re-establishing the maritime custom-house of that port; quite the contrary. The supreme director is fully convinced of the advantages which must accrue from the freedom of that port; but, at the same time, he thinks it just and proper to restrain this advantage within certain bounds, in order to avoid thereby those abuses, evils, and pernicious consequences, which, from the 1st of January, 1848, have been continually and palpably entailed upon the republic.

Consequently, the undersigned has received express orders to call, in a very particular manner, the attention of the American government to these and other serious evils, which it would be very tedious to detail in this place; he has been especially charged to make known to the honorable Secretary of State the wishes which the government of Nicaragua entertains, and the absolute necessity it is under, to recover its unequivocal sovereignty over the Mosquito territory, and most especially over the port of San Juan del Norte, which is beyond the limits of the territory aforesaid.

In order to accomplish this object, the undersigned has the honor of renewing here to the honorable Secretary of State the conditions and sacrifices to which his government would submit, in order to do away, on its part, with the obstacles that have hitherto prevented a definite settlement of these questions.

These conditions are—

1st. To declare *San Juan del Norte* a free port.

2d. To pay, by way of indemnity, and for the extinction of any pretended title which the Mosquitos may set up, four per cent. on the net proceeds of the port for a period of five consecutive years.

3d. To designate and to pay a life pension to the prince or Mosquito chief, either at Leon, Granada, or at some other point which may be most suitable to the government.

4th. To acknowledge as lawful the *rational* grants of land which may have been made from January 1, 1848, by the actual authorities of the pretended kingdom of Mosquito, with the exception of those that are in opposition to the grants previously made by the Spanish government, by the federal government of Central America, or by the government of Nicaragua; those that may be at variance with the rights and privileges of the canal and accessory transit companies, and those made at such points or localities as the State may want for forts, custom-houses, barracks, warehouses, arsenals, light-houses, and other public edifices, such as quarantine hospitals, &c.

The government of Nicaragua understands that many grants of land have been made, with a mere mercantile or speculative object, and for insignificant considerations, the terms of which are not known, seeing that those improvements that are mostly called for in the port have not been made, and that the obstacles against the navigation of

the river, where it runs into the territory of the republic, have not been removed.

The government of Nicaragua has full knowledge of irregularities and abuses which cannot and should not be sanctioned. For this reason it will only acknowledge those grants that have been made for some other object besides a mere mercantile speculation, and such as do not exceed those bounds that are compatible with reason and justice.

The government of Nicaragua is not ignorant of the difficulties and complications which these subjects involve, and therefore it commits and intrusts the solution of the same to the prudence and sense of justice by which the people and the government of the American Union are governed. Nor is it blind to the fact that, in order to effect a definite settlement of these matters, a certain period of time is necessary, which, unfortunately, is in direct opposition to its interests; therefore, the government would wish that, while the anxiously wished-for settlement is pending, the port of *San Juan del Norte* might be restored to its original and lawful authority and sovereignty, pledging itself to carry into effect at once that portion of the grants mentioned above, accordingly as it may be deemed necessary and proper.

And in order to show by what feelings the government is actuated with regard to a brother State, that of Costa Rica, with which there happily exists at present the best relations, the supreme director promises that, while the pending questions concerning boundaries between the two States continue unsettled, Costa Rica shall enjoy perfect liberty of egress and ingress by the port and river of *San Juan* as far as that of *Serapiqui* which leads to its territory.

A commission of two individuals was formerly appointed in virtue of a gubernatorial decree; said commission is especially instructed to propose and to effect a settlement upon the most liberal bases, which will not fail to produce the desired result.

With regard to the canal and transit companies, the undersigned begs to refer to his communication of November 2, 1852, inasmuch as circumstances in relation to these companies have not undergone the least variation, and because, at present, certain modifications are more-over required, by mutual agreement, in the original contracts.

In conclusion, the undersigned begs, with the utmost earnestness, that the honorable W. L. Marcy will be pleased to take into consideration the contents of this despatch. He calls, very particularly, his attention to that point concerning which the government of Nicaragua has her most flattering hopes at stake, in consequence of her interests, not only material but even moral, being bound up in it. This point, of such transcendental interest, is the immediate restoration of the port of *San Juan*, while the questions are being settled, and the negotiations that are now pending with the government of her Britannic Majesty are being brought to a close.

Nicaragua pledges herself to give all the securities and guaranties which may be deemed necessary, and which are in accordance with the dignity of the government and of the nation. In view of these guaranties, the undersigned does not believe that any serious obstacle can

be opposed to the accomplishment of her just and natural desires, from the immediate realization of which depend, in a great measure, the welfare, the peace, the security, and the good order of the republic.

The undersigned cannot do otherwise than to insist upon this main point, and to renew his request for the prompt and immediate restoration of the port of *San Juan del Norte*, confiding, as he does, in the justice, equity, as well as in the sentiments of close and cordial friendship which govern and unite the American government and people to and in favor of their sister republic of Nicaragua.

The undersigned avails himself of this opportunity to renew to the honorable W. L. Marcy his sentiments of his high consideration.

J. DE MARCOLETA.

Hon. W. L. MARCY,
Secretary of State.

Mr. Marcy to Mr. Molina.

DEPARTMENT OF STATE,
Washington, December 17, 1853.

The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of Mr. Molina, envoy extraordinary and minister plenipotentiary of Costa Rica, of the 13th instant.

In reply, the undersigned has the honor to state, for the information of Mr. Molina, that, should the Postmaster General deem it expedient to accept the proposition of the Nicaragua company for carrying the United States mail from the Atlantic coast to California, he is unable to discover any grounds for such an objection as the minister of Costa Rica has presented in that note. In employing that company for such a purpose, the United States make no decision or intimate any opinion as to the rights of either Nicaragua or Costa Rica to control the navigation of the river San Juan or the Nicaragua lake, nor do they undertake to inquire into the origin of that company's right of transit, now used by it, across the isthmus. All they know, or care to know, is, that the Nicaragua company have established such a transit, and constantly use it to carry passengers and merchandise over the isthmus to the Pacific coast. An agreement with it to carry the United States mail implies no expression of opinion as to which of the two States—Nicaragua or Costa Rica—has the right to grant, or has granted, the privilege of transit to that company. It is an entire mistake on the part of the minister of Costa Rica to assume that, by employing the transit company to carry the mail, the United States would express, or intend to express, any opinion either in favor of, or adverse to, the claim of Costa Rica to control the navigation of the river San Juan or the lake of Nicaragua. If the transit company are infringing the rights of that State, it will have the same authority to obstruct or withhold from the use of that company that navigation, as well after as before a contract shall be made with it to carry the

United States mail. Such a contract is not, nor is it intended to be, any interference with the rights of Costa Rica, whatever those rights may be.

Taking this view of the subject—which is the correct one—Mr. Molina will see that the acceptance by the Postmaster General of the United States of the proposition of the company, should it be accepted, to carry the United States mail across the isthmus, affords not the slightest ground of complaint by Costa Rica that this government is in any way interposing in the dispute which exists between that State and Nicaragua as to the navigation of the river San Juan and Nicaragua lake.

In relation to the proposition referred to by Mr. Molina, of submitting the dispute to the arbitration of the United States, the undersigned will only say that the parties have not concurred in any such submission. If they should do so, the undersigned believes, as he has heretofore intimated to Mr. Molina, that the President would consent to act as umpire in that matter.

The undersigned, &c.

W. L. MARCY.

Señor Don FELIPE MOLINA, &c., &c., &c.

Mr. Marcy to Mr. Borland.

[Extract.]

[No. 8.]

DEPARTMENT OF STATE,
Washington, December 30, 1853.

SIR: Your several despatches (to No. 11 inclusive) have been received at this department.

In relation to the Clayton and Bulwer treaty, about which so much is said in your despatches, I have only to remark that this government considers it a subsisting contract, and feels bound to observe its stipulations so far as by fair construction they impose obligations upon it. If Great Britain has failed, or shall fail, on her part to fulfil the obligations she has therein assumed, or if she attempts to evade them by a misconstruction of that instrument, the discussions that may arise on these subjects must necessarily take place between the parties to it. The views taken of that treaty by the United States, and your course in relation to it, pointed out in your first instructions, will be observed until you receive notice of their modification. In these instructions you were furnished with the views of one of the contracting parties, (Great Britain;) but at the same time you were informed that the United States did not concur in them. In the negotiations at London, in regard to the affairs of Central America, the meaning of that instrument will come directly under discussion. So far as respects your mission, you will regard it as meaning what the American negotiator intended when he entered into it, and what the Senate must have understood it to mean when it was ratified, viz:

that by it Great Britain came under engagements to the United States to recede from her asserted protectorate of the Mosquito Indians, and to cease to exercise dominion or control in any part of Central America. If she had any colonial possessions therein at the date of the treaty, she was bound to abandon them, and equally bound to abstain from colonial acquisitions in that region. In your official intercourse with the States of Central America, you will present this construction of the treaty as the one given to it by your government. It is believed that Great Britain has a qualified right over a tract of country called the Belize, from which she is not ousted by this treaty, because no part of that tract, when restricted to its proper limits, is within the boundaries of Central America.

* * * * *

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

SOLON BORLAND, Esq., &c., &c., &c.

Mr. Marcoleta to Mr. Marcy.

[Translation.]

WASHINGTON, *January 24, 1854.*

The undersigned, envoy extraordinary and minister plenipotentiary of the republic of Nicaragua, has the honor of enclosing to the honorable W. L. Marcy, Secretary of State of the United States, a copy of the propositions he has just made in the name of his government to that of her Britannic Majesty, for the definite and final settlement of the matters relating to the port of San Juan del Norte, the territory and coast of Mosquitos.

The undersigned, being convinced of the lively interest which the government of the Union feels to see these questions (in which, thanks to its sympathy for Nicaragua, it has taken so active and favorable a part) at once terminated, has no doubt but that this project will elicit the fullest approbation of the honorable W. L. Marcy; seeing that while it meets all exigencies and protects the susceptibility of the parties interested, it likewise does away with every pretext for further delays, and removes all causes of future discord.

On the other side, the government of Nicaragua, the party principally interested in this matter, could not continue any longer in a state of endless expectancy, which, without any indication of the probability of a happy issue, seriously compromises her dearest and most vital interests. In contributing its proportion of sacrifices, it contributes to the re-establishment of good harmony between all parties, and secures at the same time its political and commercial relations with the great powers.

As the intricate questions and discussions of which Europe is now the theatre, and the eventuality of more serious complications on the old continent might perhaps compromise the desired result, the under-

signed has, at the same time, proposed to his lordship the Earl of Clarendon that he would be pleased to authorize, if he deems it proper, her Britannic Majesty's minister plenipotentiary in Washington to proceed, conjointly with the undersigned, to negotiate and adjust a treaty upon the bases herewith enclosed—bases which were agreed upon at Managua in September, 1853, between his excellency the general supreme director of Nicaragua and the honorable Solon Borland, minister plenipotentiary of the United States in Central America.

The undersigned, not doubting the approbation and co-operation of the Hon. W. L. Marcy, Secretary of State of the American Union, in this matter, avails himself of this new opportunity to renew the assurance of his highest consideration.

J. DE MARCOLETA.

The Hon. W. L. MARCY,
Secretary of State of the American Union.

[Translation.]

Project of settlement and object of the articles of a treaty between Great Britain and the republic of Nicaragua relative to the port of San Juan del Norte, territory and coast of Mosquitos, proposed to his lordship the Earl of Clarendon by the minister plenipotentiary of Nicaragua in the United States and in Great Britain.

1st. The Mosquito Indians, and the other tribes who inhabit the territory of that name, shall remain forever incorporated with, and perpetually united to, the republic of Nicaragua.

2d. The territory and coast of Mosquitos shall form for the future a department of the republic.

3d. The port of San Juan del Norte shall be replaced under the authority and sovereignty of Nicaragua.

4th. The same shall be declared a free port.

By way of compensation, Nicaragua engages—

1st. To exercise a special protection over the Indians; to promote their moral and material instruction, and not to molest or trouble them on account of any act anterior to the ratification of the treaty.

2d. To pay to the Indians four per cent. on the net produce of the duties of import for the port of San Juan del Norte during five years.

3d. To award to the Mosquito chief an annual pension for life, in proportion to the salaries received by the functionaries of the republic.

4th. To recognise as legitimate the grants of land which have been followed by occupation made since the 1st of January, 1848: provided that said grants are not in opposition to those made by the Spanish government, by the confederacy of Central America, and by the government of Nicaragua, nor to the rights which the canal company has enjoyed until now; to those that have been made in localities which the government of Nicaragua might want for warehouses, cus-

tom-houses, barracks, arsenals, fortifications, light-houses, and other public edifices.

5th. Those grants will not be recognised which have been made before or after the 1st of January, 1848, for speculative and mercantile purposes, and the excessive extension of which leads to presume the existence of such an object.

J. D. MARCOLETA.

WASHINGTON, *January 21, 1854.*

Mr. Marcy to Mr. Marcoleta.

DEPARTMENT OF STATE,
Washington, February 21, 1854.

The undersigned, Secretary of State of the United States, has not been able to comply with the request contained in the note of the envoy extraordinary and minister plenipotentiary of Nicaragua, of the 24th ultimo, to co-operate with that republic in the effort he is making to negotiate a treaty between it and Great Britain, on the bases proposed by Mr. Marcoleta to Lord Clarendon, her Britannic Majesty's principal secretary of state for foreign affairs. Mr. Marcoleta must be fully aware that the United States deny that Great Britain has any sovereign rights over any part of Central America. To treat with her in the way proposed, or to co-operate in making such a treaty, would be a distinct acknowledgment that she has such rights. Such a treaty would also interfere directly with the claims set up by another of the central republics, Costa Rica; and very little would be accomplished towards settling the questions which are now disturbing Nicaragua in regard to boundary and jurisdiction, unless Costa Rica were a party to it. The principal matters embraced in the *projet* of the treaty submitted to the undersigned by Mr. Marcoleta, relate to the conflicting claims and pretensions between that republic and Nicaragua; and they could not, certainly, be disposed of by an arrangement with Great Britain, which has no sovereign rights whatever in Central America. It is true, the latter power claims a right, as assumed protector of the Mosquito Indians, to see that they are fairly treated. To this end she would feel authorized to look to any settlement of the pending questions between the two republics which might affect the condition and well-being of this tribe of Indians; but, beyond that object, her interference could not be invoked without an implication that she had rights which the United States, as well as Costa Rica and Nicaragua, deny to her.

The negotiation proposed by Mr. Marcoleta, in which he solicits the co-operation of the United States, should be with Costa Rica, and not with Great Britain; and with it Great Britain should not be invited to interpose any further than to yield her acquiescence in any provision that may be made for the Mosquitos. It is very questionable whether the United States should or would countenance her interposition even to this extent, for they do not acknowledge that Great Britain has now, or ever had, a rightful protectorate over these Indians.

Entertaining these views, the United States cannot, as must be very evident to Mr. Marooleta, co-operate with Nicaragua in the proposed negotiation with Great Britain. At the same time, it is proper to say that the United States are anxious that all the questions which are disturbing the friendly relations between the Central American States should be amicably adjusted, and they are ready to lend their good offices to bring about such a desirable result.

The undersigned avails himself of this occasion to renew to Mr. Marcoleta the assurances of his distinguished consideration.

W. L. MARCY.

Señor Don JOSE DE MARCOLETA, &c., &c., &c.

CORRESPONDENCE

RESPECTING

THE ARBITRATION OF DIFFERENCES

BETWEEN

THE UNITED STATES AND GREAT BRITAIN,

OF THE CONSTRUCTION OF

THE CONVENTION OF WASHINGTON OF JULY 4, 1850,

COMMUNICATED

TO THE SENATE BY THE PRESIDENT OF THE UNITED STATES AT THE FIRST SESSION
OF THE THIRTY-FOURTH CONGRESS.

CORRESPONDENCE

BETWEEN

THE UNITED STATES AND GREAT BRITAIN,

ON

SUBMITTING TO ARBITRATION THE CONSTRUCTION OF THE TREATY
OF WASHINGTON.

To the Senate of the United States :

I transmit a report from the Secretary of State, with accompanying papers, in answer to the resolution of the Senate of yesterday.

FRANKLIN PIERCE.

WASHINGTON, *February* 29, 1856.

To the President of the United States :

The Secretary of State, to whom was referred the resolution of the Senate of yesterday, requesting the President, if in his opinion it be not incompatible with the public interest, to inform that body "whether any offer has been made by the government of Great Britain to the government of the United States to refer to the arbitrament of some friendly power, or otherwise, the questions in difference between the two governments, upon the construction of the convention of 4th July, [19th April,] 1850, with any correspondence touching or concerning such proposed arbitration," has the honor to lay before the President the papers mentioned in the subjoined list, which contain all the information in this department called for by the resolution.

All which is respectfully submitted.

W. L. MARCY.

DEPARTMENT OF STATE,

Washington, February 29, 1856.

List of papers accompanying the report of the Secretary of State to the President, of the 29th of February, 1856.

Mr. Buchanan to Mr. Marcy, (extract,) November 21, 1854.

The same to the same, (extracts,) November 2, 1855.

The same to the same, (extract,) November 9, 1855.

The same to the same, (extracts,) February 5, 1856.

The same to the same, (extract,) February 8, 1856.

Mr. Crampton to Mr. Marcy, February 27, 1856.

Lord Clarendon to Mr. Crampton, November 10, 1855.

Mr. Buchanan to Mr. Marcy.

[Extract.]

[No. 49.]

LEGATION OF THE UNITED STATES,
London, November 21, 1854.

SIR: * * * * *

In the course of the conversation, he intimated that it might be desirable to have the opinion of a third power on the true construction of the convention. To this I playfully observed that it would now be difficult to find an impartial umpire, as they had gone to war with our arbitrator, the Emperor of Russia. This was, however, but a mere intimation on his part. I then urged upon him, as strongly as I could, the reasons which I thought ought to induce the British government to relinquish the Bay islands to Honduras. He replied, that these islands were not of the least value to Great Britain, and the only question with them was whether the national honor did not forbid this course.

* * * * *

Yours, very respectfully,

JAMES BUCHANAN.

Hon. WILLIAM L. MARCY,
Secretary of State.

Mr. Buchanan to Mr. Marcy.

[Extracts.]

[No. 99.]

LEGATION OF THE UNITED STATES,
London, November 2, 1855.

SIR: * * * * *

According to the appointment mentioned in my last despatch, I met Lord Clarendon yesterday afternoon at the Foreign Office.

* * * * *

In the course of the conversation I observed to him, that the most serious difficulty between the governments might arise out of the Central American questions. He said that when two governments disagreed about the construction of a treaty, the best and most natural mode was to refer the question to a third power. At an early period of the negotiation he had made this suggestion; but I had jocularly replied that the Emperor of Russia was the only power sufficiently independent to act as an impartial umpire in the case, and they had gone to war with him. * * * * *

Yours, very respectfully,

JAMES BUCHANAN.

Hon. WILLIAM L. MARCY,
Secretary of State.

Mr. Buchanan to Mr. Marcy.

[Extract.]

[No. 101.]

LEGATION OF THE UNITED STATES,
London, November 9, 1855.

SIR: I had an interview with Lord Clarendon on yesterday by appointment. * * * * *

He then said, About these Central American questions, the best mode of settling them is by arbitration. I replied there was nothing to arbitrate. He said the true construction of the treaty was a proper subject for arbitration. I told him I did not consider it a question for construction at all; the language was plain and explicit, and I thought this would be the almost unanimous opinion of the American people; but, in writing to you, I should mention what he had now said, as I had done what he had said at our former interview. * *

Yours, very respectfully,

JAMES BUCHANAN.

Hon. WILLIAM L. MARCY,
Secretary of State.

Mr. Buchanan to Mr. Marcy.

[Extracts.]

[No. 119.]

LEGATION OF THE UNITED STATES,
London, February 5, 1856.

SIR: * * * * *

Ere this can reach Washington, you will have read the speeches of Lord Derby and Lord Clarendon in the House of Lords on Thursday evening last, which will speak for themselves.

Lord Clarendon says, in relation to the Central American questions: "In such a case, correspondence is useless, and I lost no time in offering to refer the whole question to the arbitration of any third power, both sides agreeing to be bound by the decision. That offer has not yet been accepted; it has been renewed, and I hope that, upon further consideration, the government of the United States will agree to it."

* * * * *

It is, therefore, proper for me to state, as a matter of fact, that I have reported to you, in the most faithful manner, every conversation which has passed between Lord Clarendon and myself on the subject of a reference of these questions to a friendly power. As I have never learned that the British government has made any such offer to the government of the United States through Mr. Crampton, I infer that his lordship must have referred to the general conversations between him and myself, which would by no means justify the broad terms of his statement. Thus much merely to vindicate the truth of history.

* * * * *

Yours, very respectfully,

JAMES BUCHANAN.

Hon. WILLIAM L. MARCY,
Secretary of State.

Mr. Buchanan to Mr. Marcy.

[Extract.]

[No. 120.]

LEGATION OF THE UNITED STATES,
London, February 8, 1856.

SIR: On Wednesday last, the 6th instant, I had an interview with Lord Clarendon at the Foreign Office. I told him I desired to ascertain whether the statement he had made in the House of Lords on the evening of Thursday, the 31st ultimo, that the British government had made to the American government an offer, which has been recently renewed, to arbitrate the Central American questions, was founded on what had passed between him and myself in conversation; or whether he had instructed Mr. Crampton to make to you, in writing, a formal proposal for arbitration. He replied, that his statement was founded on our different conversations; and that, in these, he had several times proposed to me a reference of these questions to arbitration; and he expressed the hope that I had communicated his propositions to my government. I informed him that I had faithfully reported to you all the conversations we had held in reference to an arbitration; but I had not believed that what he had said on these occasions amounted to such an offer as could be recognised by our government as a foundation for specific action on so grave a matter. I added, that I did not doubt

you were of the same opinion, as I had never received a line from you on the subject. He observed, that before holding these conversations with me, he had consulted the cabinet, and spoke their sentiments as well as his own. I remarked that this fact had now, for the first time, been communicated to me. If he had informed me of it at the time, this would have given his conversation a more serious character, and caused it to make a deeper impression on my mind. He said he had thought that, as a matter of course, I would consider what he had said to me had been said after consultation with the cabinet. In reply, I observed that I had thought, when one nation desired to propose to another the submission of an international dispute to arbitration, this would be done by writing, and in due form. Such had been their own course when they proposed to arbitrate the Oregon question. Besides, the President might, if he thought proper, consult the Senate on the question; and what would be thought by that body, if such a proposition were presented to them in the loose form of various conversations between him and myself, which, after all, I might, through mistake or inadvertence, not have reported correctly? He said that what he had done he considered the preliminary step; and if our government had indicated any satisfaction with it, they would have been prepared to proceed further; but from what I had said to him, he did not think they had received much encouragement. I told him that whenever I had spoken to him upon the subject, I had always been careful to assure him that I was expressing my own individual sentiments, without any instructions or information from my government; and that these remained unchanged. I also observed that his last letter to me, finally denying our construction of the treaty, and forming an issue between the two governments, might appropriately have contained a proposition for arbitration; and in this manner the question might have been brought in regular form before our government. He then, for the first time, informed me that he had addressed a despatch to Mr. Crampton on the subject, with instructions to him to read it to you. He then sent for it and read it to me. I believe it is dated in November; but a copy being doubtless in your possession, it will speak for itself; and he informed me that all you had said about it to Mr. Crampton was, that the matter was in Mr. Buchanan's hands.

He proceeded to express a decided opinion in favor of arbitration, and said that when two friendly governments disagreed upon the construction of a treaty, the natural and appropriate course was to refer the question to a third friendly power. He had ever firmly believed their construction of the treaty to be correct. He then requested me to communicate to you their proposal for an arbitration, and how anxious they were that the question might be settled in this manner. I told him I should cheerfully comply with his request, but repeated that my own individual opinions remained unchanged. I considered the language of the treaty too clear for serious doubt; and such I believed was the opinion of public men of all parties in the United States. This had been evinced by the recent debate in the Senate on the President's message. Besides, the difficulty of selecting a suitable

sovereign as an arbitrator seemed insurmountable. But I said this was a question for my government, and not for myself.

* * * * *

Yours, very respectfully,

JAMES BUCHANAN.

Hon. WILLIAM L. MARCY,
Secretary of State.

Mr. Crampton to Mr. Marcy.

[Received at the Department of State on the 27th of February, at 11 o'clock p. m.]

WASHINGTON, *February 27, 1856.*

MY DEAR SIR: Observing that some misapprehension seems to exist as to the offer made by Lord Clarendon to Mr. Buchanan, to submit the points regarding the interpretation of the Clayton-Bulwer treaty, upon which the two governments disagree, to arbitration, I think it well to send you the enclosed despatch, which I received from Lord Clarendon on the subject in December last. I regret not having made you this communication before; but the truth is, that the last paragraph of the despatch escaped my attention until I referred to it lately; and as I was aware that the negotiation of the question regarding Central America was in Mr. Buchanan's and Lord Clarendon's hands, I considered the despatch as meant merely for my own information as to what was going forward upon a subject in regard to which I inferred you were already informed.

Believe me yours, very faithfully,

JOHN F. CRAMPTON.

P. S.—I send the original despatch, which I will beg of you to return to me, but I have no objection to your taking a copy of it.

J. F. C.

Lord Clarendon to Mr. Crampton.

[No. 258.]

FOREIGN OFFICE, *November 10, 1855.*

SIR: Mr. Buchanan having, in the course of conversation a few days ago, adverted to the impression that would be created in the United States by the non-settlement of the Central American question, I again assured him that England had no wish to extend her influence, or to obtain any territory in that part of the world; and I reminded him that, as the difference between this country and the United States turned solely upon the interpretation of the treaty of 1850, I had offered, on the part of her Majesty's government, to submit the case to the arbitration of a third power, but that he had declined the offer.

Her Majesty's government, I said, would still abide by that offer, and thought it would be the fairest and most amicable manner of arriving at a settlement of the question.

Mr. Buchanan said he would make it known to his government, and you are instructed to communicate this despatch to Mr. Marcy.

I am, with great truth and regard, sir, your most obedient, humble servant,

CLARENDON.

J. F. CRAMPTON, Esq., &c., &c., &c.

CORRESPONDENCE

IN RELATION TO

ENLISTMENT OF TROOPS WITHIN THE UNITED STATES,

BY

THE AGENTS OF GREAT BRITAIN,

COMMUNICATED

TO THE SENATE BY THE PRESIDENT OF THE UNITED STATES AT THE FIRST
SESSION OF THE THIRTY-FOURTH CONGRESS.

CORRESPONDENCE AND PAPERS

RELATIVE TO THE

ENLISTMENT OF TROOPS WITHIN THE UNITED STATES

BY

THE AGENTS OF GREAT BRITAIN.

To the Senate of the United States:

In answer to the resolution of the Senate of the 25th instant, I transmit reports from the Secretary of State and the Attorney General, to whom the resolution was referred.

FRANKLIN PIERCE.

WASHINGTON, *February* 27, 1856.

To the President of the United States:

The Secretary of State, to whom was referred the resolution of the Senate of the 25th instant, requesting the President, if not incompatible with the public interest, to communicate to that body "the correspondence which has taken place between this government and that of Great Britain, in regard to the enlistment of soldiers within the United States by the agents and officers of the latter, for the British army, accompanied by such evidence and documents as the President may deem proper to show the connexion of these agents and officers with the alleged violation of our laws and sovereign rights," has the honor to lay before the President the papers mentioned in the subjoined list.

All of which is respectfully submitted.

W. L. MARCY.

DEPARTMENT OF STATE,

Washington, February 27, 1856.

List of papers accompanying the report of the Secretary of State to the President, of February 27, 1856.

- Mr. Crampton to Mr. Marcy, April 21, 1854.
 Mr. Marcy to Mr. Crampton, April 28, 1854.
 Lord Clarendon to Mr. Crampton, April 12, 1855.
 Mr. Marcy to Mr. Buchanan, June 9, 1855.
 Mr. Buchanan to Mr. Marcy, (extract,) July 13, 1855, with an accompaniment.
 Mr. Marcy to Mr. Buchanan, July 15, 1855.
 Mr. Buchanan to Mr. Marcy, (extract,) July 20, 1855, with an accompaniment.
 The same to the same, (extract,) August 3, 1855.
 Mr. Marcy to Mr. Crampton, September 5, 1855.
 Mr. Crampton to Mr. Marcy, September 7, 1855.
 Mr. Marcy to Mr. Buchanan, September 8, 1855.
 Mr. Buchanan to Mr. Marcy, (extract,) September 28, 1855, with accompaniments.
 Mr. Marcy to Mr. Buchanan, October 1, 1855.
 Mr. Buchanan to Mr. Marcy, (extract,) October 3, 1855.
 Mr. Buchanan to Mr. Marcy, (extract,) October 30, 1855.
 Mr. Marcy to Mr. Buchanan, October 13, 1855.
 Mr. Buchanan to Mr. Marcy, November 2, 1855.
 Same to the same, (extracts,) November 9, 1855.
 Lord Clarendon to Mr. Crampton, December 16, 1855.
 Mr. Marcy to Mr. Buchanan, December 28, 1855, with a copy of the report of the case of the United States against Henry Hertz, and of the proceedings relative to the barque Maury.
 Mr. Buchanan to Mr. Marcy, (extract,) February 1, 1856.

Mr. Crampton to Mr. Marcy.

WASHINGTON, *April 21, 1854.*

The undersigned, her Britannic Majesty's envoy extraordinary and minister plenipotentiary to the United States of America, has received orders from his government to make to the Secretary of State of the United States the following communication:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and his Majesty the Emperor of the French, being compelled to take up arms for the purpose of repelling the aggression of his Majesty the Emperor of Russia upon the Ottoman Empire, and being desirous to lessen as much as possible the disastrous consequences to commerce resulting from a state of warfare, their Majesties have resolved, for the present, not to authorize the issue of letters of marque.

In making this resolution known, they think it right to announce, at the same time, the principles upon which they will be guided during the course of this war with regard to the navigation and commerce of neutrals.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland has accordingly published the accompanying declaration, which is identical with that published by his Majesty the Emperor of the French.

In thus restricting, within the narrowest limits, the exercise of their rights as belligerents, the allied governments confidently trust that the governments of countries which may remain neutral during this war, will sincerely exert every effort to enforce upon their subjects or citizens the necessity of observing the strictest neutrality.

Her Britannic Majesty's government entertains the confident hope that the United States government will receive with satisfaction the announcement of the resolutions thus taken in common by the two allied governments, and that it will, in the spirit of just reciprocity, give orders that no privateer under Russian colors shall be equipped or victualled, or admitted with its prizes, in the ports of the United States; and also that the citizens of the United States shall rigorously abstain from taking part in armaments of this nature, or in any other measure opposed to the duties of a strict neutrality.

The undersigned has the honor to avail himself of this occasion to renew to the Secretary of State of the United States the assurance of his highest consideration.

JOHN F. CRAMPTON.

Hon. W. L. MARCY,
Secretary of State, &c., &c.

Mr. Marcy to Mr. Crampton.

DEPARTMENT OF STATE,
Washington, April 28, 1854.

The undersigned, Secretary of State of the United States, has had the honor to receive the note of Mr. Crampton, her Britannic Majesty's envoy extraordinary and minister plenipotentiary, of the 21st instant, accompanied by the declaration of her Majesty the Queen of the United Kingdom of Great Britain and Ireland, in regard to the rule which will for the present be observed towards those powers with which she is at peace, in the existing war with Russia.

The undersigned has submitted those communications to the President, and received his direction to express to her Majesty's government his satisfaction that the principle, that free ships make free goods, which the United States have so long and so strenuously contended for as a neutral right, and in which some of the leading powers of Europe have concurred, is to have a qualified sanction by the practical observance of it in the present war, by both Great Britain and France—two of the most powerful nations of Europe.

Notwithstanding the sincere gratification which her Majesty's declaration has given to the President, it would have been enhanced if the rule alluded to had been announced as one which would be observed not only in the present, but in every future war in which Great

Britain shall be a party. The unconditional sanction of this rule by the British and French governments, together with the practical observance of it in the present war, would cause it to be henceforth recognised throughout the civilized world as a general principle of international law. This government, from its very commencement, has labored for its recognition as a neutral right. It has incorporated it in many of its treaties with foreign powers. France, Russia, Prussia, and other nations, have, in various ways, fully concurred with the United States in regarding it as a sound and salutary principle, in all respects proper to be incorporated into the law of nations.

The same consideration which has induced her Britannic Majesty, in concurrence with the Emperor of the French, to present it as a concession in the present war, the desire "to preserve the commerce of neutrals from all unnecessary obstruction," will, it is presumed, have equal weight with the belligerents in any future war, and satisfy them that the claims of the principal maritime powers, while neutral, to have it recognised as a rule of international law, are well founded, and should be no longer contested.

To settle the principle that free ships make free goods, except articles contraband of war, and to prevent it from being called again in question, from any quarter or under any circumstances, the United States are desirous to unite with other powers in a declaration, that it shall be observed by each, hereafter, as a rule of international law.

The exemption of the property of neutrals, not contraband, from seizure and confiscation when laden on board an enemy's vessel, is a right now generally recognised by the law of nations. The President is pleased to perceive, from the declaration of her Britannic Majesty, that the course to be pursued by her cruisers will not bring it into question in the present war.

The undersigned is directed by the President to state to her Majesty's minister to this government, that the United States, while claiming the full enjoyment of their rights as a neutral power, will observe the strictest neutrality towards each and all the belligerents. The laws of this country impose severe restrictions, not only upon its own citizens, but upon all persons who may be residents within any of the territories of the United States, against equipping privateers, receiving commissions, or enlisting men therein, for the purpose of taking a part in any foreign war. It is not apprehended that there will be any attempt to violate the laws; but should the just expectation of the President be disappointed, he will not fail in his duty to use all the power with which he is invested to enforce obedience to them. Considerations of interest, and the obligations of duty, alike give assurance that the citizens of the United States will in no way compromise the neutrality of their country, by participating in the contest in which the principal powers of Europe are now unhappily engaged.

The undersigned avails himself of this opportunity to renew to Mr. Crampton the assurance of his distinguished consideration.

W. L. MARCY.

JOHN F. CRAMPTON, Esq., &c., &c.

[Same, *mutatis mutandis*, to the Count de Sartiges.]

Lord Clarendon to Mr. Crampton.

[Delivered to Mr. Marcy in the course of the month of May, 1855.]

FOREIGN OFFICE, *April 12, 1855.*

SIR: I entirely approve of your proceedings, as reported in your despatch No. 57, of the 12th ultimo, *with respect to the proposed enlistment in the Queen's service of foreigners and British subjects in the United States.*

The instructions which I addressed to you upon this subject, and those which were sent to the governor of Nova Scotia, were founded upon the reports from various quarters that reached her Majesty's government of the desire felt by many British subjects as well as Germans in the United States to enter the Queen's service for the purpose of taking part in the war in the East; but the law of the United States with respect to enlistment, however conducted, is not only very just but very stringent, according to the report which is enclosed in your despatch, and her Majesty's government would on no account run any risk of infringing this law of the United States.

CLARENDON.

J. F. CRAMPTON, Esq., &c., &c., &c.

Mr. Marcy to Mr. Buchanan.

[No. 91.]

DEPARTMENT OF STATE,
Washington, June 9, 1855.

SIR: Some time since it became known that a plan was on foot to enlist soldiers within the limits of the United States to serve in the British army, and that rendezvous for that purpose had been actually opened in some of our principal cities. Besides being a disregard of our sovereign rights as an independent nation, the procedure was a clear and manifest infringement of our laws, enacted for the express purpose of maintaining our neutral relations with other powers. It was not reasonable to suspect that this scheme was in any way countenanced by the British government, or any of its subordinate authorities resident within the United States or in the British North American provinces; but a further examination into the matter has disclosed the fact that it has had not only the countenance, but the active support of some of these authorities, and, to some extent, the sanction of the British government.

When intimations were thrown out that the British consuls in this country were aiding and encouraging this scheme of enlistment within our limits, Mr. Crampton, her Britannic Majesty's minister to this government, showed me the copy of a letter, which he had addressed to one of them, disapproving of the proceeding, and discountenancing it as a violation of our laws. After this act on the part of the British minister, it was confidently believed that this scheme, however it may have originated, and with whatever countenance it might have been

at first looked on by the British functionaries, would at once have been abandoned. This reasonable expectation has not been realized; for efforts to raise recruits within the United States for the British army have not been intermitted, but are still prosecuted with energy. To arrest a course of proceedings which so seriously compromised our neutrality, prosecutions, by the order of the government, were instituted against the offenders. This led to developments which established the fact that the governor of Nova Scotia, apparently with the knowledge and approval of her Majesty's government, had a direct agency in this illegal proceeding.

I herewith send you a copy of an order or notification which has been published in our newspapers, and believed to be genuine, purporting to have been issued by that functionary. It clearly appears from this document that the recruits were to be drawn from the United States; that the engagements with them were to be made within our limits, in open violation of the second section of the act of Congress of the 20th of April, 1818; and that British officials were the agents furnished with the means for carrying the illegal measure into effect. These agents have been engaged within our jurisdiction, devoting themselves to the execution of this plan.

Notwithstanding the legal measures taken by the officers of the United States to suppress the procedure, the work is still going on. We have accounts of persons constantly leaving the United States for the British provinces, under engagements, contracted here, to enter into the British military service. Such engagements are as much an infringement of our laws as more formal enlistments.

I am directed by the President to instruct you to call the attention of her Majesty's government to this subject. He desires you to ascertain how far persons in official station under the British government acted in the first instance in this matter with its approbation, and what measures, if any, it has since taken to restrain their unjustifiable conduct.

In the early stage of the present war, the British government turned its attention towards our neutrality laws, and particularly to the provisions which forbid the fitting out and manning privateers for foreign service. Any remissness on our part in enforcing such provisions would have been regarded by that government as a violation of our neutral relations. No one need be at a loss to conjecture how our conduct would have been viewed by the allies, or what would have been their course towards this country if it had not denounced and resisted any attempt on the part of their enemy to send its agents into our seaports to fit out privateers and engage sailors to man them; but would this government be less censurably neglectful of the duties of neutrality by permitting one of the belligerent powers to recruit its armies within our borders, than by permitting another to resort to our seaports for the purpose of organizing a privateer force to take a part in the present war?

Notwithstanding the ceaseless efforts which this government has made for several years past to restrain our citizens, and foreigners among us, from getting up enterprises to invade or disturb the neighboring possessions of a European power, the British press has loudly

proclaimed, and the British public have been induced to believe, that we have acted in bad faith, and complacently looked on, if we have not countenanced, the organization of such expeditions. While England has been severe and acrimonious in abusing the government and people of the United States on the false assumption that we have been neglectful, in this respect, of our duties as a neutral and friendly State, her officers are found among us busily engaged in carrying out a scheme in direct violation of our neutral duties, and of our laws providing for the rigid enforcement of these duties.

Under a consciousness of not deserving the reproach so gratuitously cast upon us by the British press and public, it would hardly comport with a proper sense of self-respect to refer in the way of complaint to these unfounded imputations; but it may not be out of place to notice them when called on to animadvert upon the conduct of these accusers for entering into our territories and openly violating our laws and neutral rights at the same time they are severely arraiguing this government for not restraining and punishing others who have, as they allege, committed the same offence.

The excuse offered by the British authorities for enlisting or engaging soldiers to enlist within the United States is, that her Majesty's subjects, and Germans resident therein, had expressed a desire to enter the British army. This fact, if it were unquestionable, would not justify the British authorities in converting the United States into a field for recruiting the British army.

Were not the proceedings in open violation of law, a respect for our obligations of neutrality, and the observance of the comity due to us as a friendly power, would render such a course by either belligerent disrespectful to us.

The value of such an excuse as is interposed by Great Britain in this case may be tested by its application to another in which there should be a change of parties. Would the fact that her Majesty's subjects, as well as Germans and Spaniards, and the subjects of most other nations resident in the United States, had a strong desire to aid the discontented Cubans in their efforts to throw off the domination of Spain, be accepted by Great Britain or the other nations of Europe as an excuse for the conduct of this government if it had actually connived at, or for a moment intermitted its efforts to suppress, expeditions attempted to be organized for aiding an insurrection in the island of Cuba?

Such an excuse, though sanctioned by the authority of the British government, would not be at all satisfactory to other powers, and would be disdained by the United States. This government expects that the conduct of the officers of Great Britain who have been engaged in the scheme to which I have alluded, will be disavowed by her Majesty's government, and that these offenders against our neutral rights and laws will be visited with its marked displeasure.

Though the proceedings of this government to frustrate this scheme may have caused the manner of carrying it on to be changed, there is reason to believe that it is still clandestinely prosecuted by British officers with means furnished by their government.

The President will be much pleased to learn that her Majesty's

government has not authorized the proceedings herein complained of; and has condemned the conduct of her officials engaged therein, called them to account, and taken most decisive measures to put a stop to the illegal and disrespectful procedure.

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

JAMES BUCHANAN, Esq., &c., &c., &c.

Mr. Buchanan to Mr. Marcy.

[Extract.]

[No. 80.]

LEGATION OF THE UNITED STATES,
London, July 13, 1855.

SIR: * * * * *

I herewith transmit the copy of a note addressed by me to Lord Clarendon, dated on the 6th instant, and prepared in conformity with your instructions, (No. 91,) on the subject of the enlistment and employment of soldiers for the British army within the limits of the United States, which I trust may receive your approbation. It was sent to the Foreign Office on the 7th, but its receipt has not yet been acknowledged.

Yours, very respectfully,

JAMES BUCHANAN.

Hon. WILLIAM L. MARCY,
Secretary of State.

Mr. Buchanan to Lord Clarendon.

LEGATION OF THE UNITED STATES,
London, July 6, 1855.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States, has been instructed to call the attention of the Earl of Clarendon, her Majesty's principal secretary of state for foreign affairs, to the fact that numerous attempts have been made, since the commencement of the existing war between Great Britain and Russia, to enlist soldiers for the British army within the limits of the United States, and that rendezvous for this purpose have been actually opened in some of their principal cities. When intimations were thrown out that British consuls in the United States were encouraging and aiding such enlistments, Mr. Crampton, her Britannic Majesty's minister at Washington, exhibited to the Secretary of State the copy of a letter which he had addressed to one of these consuls, disapproving of the proceeding, and discountenancing it as a violation of the neutrality laws of the United States. After this very proper conduct on the part of Mr. Crampton, it was confidently believed that

these attempts to raise military forces within the territory of a neutral nation, from whatever source they may have originated, would at once have been abandoned. This reasonable expectation has not been realized, and efforts to raise recruits within the United States for the British army are still prosecuted with energy, though chiefly in a somewhat different form. To arrest a course of proceeding which so seriously compromised the neutrality of the nation in the existing war, prosecutions were instituted, by order of the American government, against the offenders. This led to developments establishing the fact that the lieutenant-governor of Nova Scotia has had a direct agency in attempts to violate the neutrality laws of the United States. This will appear from the copy of a notification issued by that functionary, dated at Halifax, on the 15th March last, and believed to be genuine, a copy of which the undersigned has now the honor to communicate to the Earl of Clarendon. This notification has been published in the newspapers of the United States. In consequence, it is believed, of this document, purporting to be official, the practice of recruiting still proceeds with vigor, notwithstanding the legal measures adopted by the officers of the United States to suppress it. The American government are constantly receiving information that persons are leaving, and have left the United States, under engagements contracted within their limits, to enlist as soldiers in the British army, on their arrival in the British provinces. These persons are provided with ready means of transit to Nova Scotia, in consequence of the express promise of the lieutenant-governor of that province to "pay to Nova Scotian and other shipmasters" the cost of a passage for each poor man, "*willing to serve her Majesty*," "shipped from Philadelphia, New York, or Boston."

The disclosures made within the very last month, upon a judicial investigation at Boston, (a report of which is now before the undersigned,) afford good reason to believe that an extensive plan has been organized by British functionaries and agents, and is now in successful operation in different parts of the Union, to furnish recruits for the British army.

All these acts have been performed in direct violation of the second section of the act of Congress of the 20th April, 1818, which provides, "That if any person shall, within the territory or jurisdiction of the United States, enlist or enter himself, or hire or retain another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district or people, as a soldier, as a marine or seaman, on board of any vessel of war, letter of marque, or privateer, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding one thousand dollars, and be imprisoned not exceeding three years." &c.

The plain and imperative duties of neutrality, under the law of nations, require that a neutral nation shall not suffer its territory to become the theatre on which one of the belligerents might raise armies to wage war against the other. If such a permission were granted, the partiality which this would manifest in favor of one belligerent to the prejudice of the other, could not fail to produce just complaints

on the part of the injured belligerent, and might eventually involve the neutral as a party in the war.

The government of the United States, however, did not leave the enforcement of its neutral obligations to rest alone on the law of nations. At an early period of its history, in June, 1794, under the administration of General Washington, an act of Congress was passed defining and enforcing its neutral duties; and this act has been supplied, extended, and enlarged by the act already referred to, and now in force, of the 20th April, 1818. Under both these acts the very same penalties are imposed upon all persons implicated, whether the actual enlistment takes place within the territory of the United States, or whether an engagement is entered into to go beyond the limits or jurisdiction of the United States, "with intent to be enlisted or entered in the service of any foreign prince," &c., &c. Without the latter provision, the former might be easily evaded in the manner proposed by the lieutenant-governor of Nova Scotia. If the law permitted any individuals, whether official or unofficial, to engage persons in Philadelphia, New York, and Boston to serve in the British army, and to enter into contracts to transport them to Halifax, there to complete the formal act of enlistment, then it is manifest that this law, to a very great extent, would become a dead letter.

The undersigned is happy to know that in this respect the policy of the British government is identical with that of the United States. The foreign enlistment act, (59 Geo. III, ch. 69,) like the act of Congress, inflicts the same penalties upon any individual who shall, within the British dominions, engage "any person or persons whatever" "to go, or to agree to go, or embark from any part of his Majesty's dominions, for the purpose, or with intent to be so enlisted," as though the enlistment had actually taken place within the same.

And here it may be worthy of remark, that neither the foreign enlistment act, nor the act of Congress, is confined to the enlistment or engagement of British subjects or American citizens, respectively, but rightfully extends to individuals of all nations—"to any person whatever." The reason is manifest. The injury to the neutral principally consists in the violation of its territorial sovereignty by the belligerent for the purpose of raising armies; and this is the same, no matter what may be the national character of the persons who may agree to enter the service.

The government of the United States can look back with satisfaction to the manner in which it has performed its neutral duties at every period of its history; and this often at the imminent risk of being involved in war.

In the early stage of the present war, the British government very properly turned its attention towards the neutrality laws of the United States, and particularly to the provisions which forbid the fitting out and manning privateers for foreign service. Any remissness in enforcing such provisions would have been justly regarded by that government as a violation of the neutral relations of the United States. It is not difficult to conjecture in what light the conduct of the American government would have been viewed by the allies had it not denounced and resisted any attempt on the part of their enemy to send

its agents into the ports of the United States to fit out privateers, and engage sailors to man them. But would the government of the United States be less censurably neglectful of the duties of neutrality were it now to suffer one of the allies to recruit armies within its borders, than it would have been had it permitted the other belligerent to resort to American seaports for the purpose of organizing a privateer force to take a part in the present war?

In view of all these considerations, the President has instructed the undersigned to ascertain from the Earl of Clarendon how far persons in official station under the British government have acted, whether with or without its approbation, either in enlisting persons within the United States, or engaging them to proceed from thence to the British provinces for the purpose of being there enlisted; and what measures, if any, have been taken to restrain their unjustifiable conduct.

The President will be much gratified to learn that her Majesty's government has not authorized these proceedings, but has condemned the conduct of its officials engaged therein, and has visited them with its marked displeasure, as well as taken decisive measures to put a stop to conduct so contrary to the law of nations, the laws of the United States, and the comity which ought ever to prevail in the intercourse between two friendly powers.

The undersigned has the honor to renew to the Earl of Clarendon the assurance of his distinguished consideration.

JAMES BUCHANAN.

Mr. Marcy to Mr. Buchanan.

[No. 102.]

DEPARTMENT OF STATE,

Washington, July 15, 1855.

SIR: Since my despatch of the 9th ultimo, in relation to recruiting soldiers within the United States for the British army, information has been received here that the business is not only continued, but prosecuted with increased vigor and success, and there is no doubt that it is carried on by the efficient aid of the officers and agents of the British government. It was expected, after the attention of her Britannic Majesty's minister near this government was directed to this subject, and after he had presented Lord Clarendon's note of the 12th of April last to this department, and given assurances that steps had been taken to arrest the illegal procedure, that we should have witnessed no further participation by British functionaries in the attempt to invade our sovereignty and defy our laws.

Something more than the disavowal then made to this department was looked for from the British government, which had, as it appears by Lord Clarendon's note, countenanced this aggression upon our rights. It was reasonably expected that her Britannic Majesty's government would have considered it due to the friendly relations between the two countries, not merely to reprove its officers engaged in this scheme of raising recruits within our jurisdiction, but promptly

to retrace the steps which had been taken, and at once to arrest the illegal proceedings ; but this government is not aware that any such course has been taken : on the contrary, it has reason to believe that the machinery first put in operation is still at work, and is still managed by British functionaries. The notification of the governor of Nova Scotia (a copy of which accompanied my despatch of the 9th ultimo) is unrevoked ; agents in our principal cities are now busily engaged in making contracts with persons to go into the British provinces and there to complete their enrolment in the British army ; liberal advances still continue to be made as an inducement for entering into such engagements, and a free passage to the British provinces is provided for them. The facts that these persons receive compensation for their engagements, are taken to the provinces free of charge, and there treated as under obligation to perfect their enlistment in the British army, show that what has been done in the United States was set on foot by the British officers in the provinces, and that this scheme was not abandoned after the presentation of Lord Clarendon's note of the 12th of April, 1855, but is continued down to the present time, and is prosecuted with more vigor and effect than at any previous period.

If an apology, grounded upon an alleged ignorance of our laws, could be offered for introducing this scheme for recruiting the British army by men drawn from the United States, that excuse could not be available after the provisions of these laws were first made known to those engaged in the scheme.

Since that time many months have elapsed, and the British officers, with a full knowledge of the illegality of the procedure and of its offensive character to the government and people of the United States as an open contempt of their sovereign rights, persist in carrying on this obnoxious scheme without any open disapproval by the home government, or any attempt to arrest it.

This persistence of British officers, residents here or in the provinces, in countenancing and aiding unrestrained by their government, and apparently with its approval, to carry out this device of drawing recruits for the British army from the United States, gives grave importance to the subject, and calls, as the President believes, for some decisive reparation.

It is presumed that her Britannic Majesty's government will regard it as due to the friendly relations between the two countries which are alike cherished by both, to explain the course it has pursued in this case ; what countenance was given to it in the beginning, and what has been subsequently done to put a stop to it.

Having at an early stage in the proceedings become aware of the illegal conduct of its officials in this matter, and the objectionable light in which that conduct was viewed by this government, it is not to be supposed that proper measures were not taken by her Britannic Majesty's government to suppress all further attempts to carry out this scheme of enlistment, and to punish those who persevered in it. It would afford satisfaction to be informed what measures were adopted by her Majesty's government to arrest the mischief ; but whatever they were, it is evident they have proved ineffectual, for the

ground of complaint still exists, and the practice is continued by the agency of persons beyond the limits of the United States as well as those within them, under circumstances which render a resort to criminal prosecutions inadequate to suppress it.

The President is disposed to believe that her Majesty's government has not countenanced the illegal proceedings of its officers and agents since its attention was first directed to the subject, and will consider it alike due to itself and to the United States to disavow their acts, and deal with them in such a manner as their grave offence merits. As recruiting for the British army, in the mode alluded to, is still prosecuted within the United States by officers and agents employed for that purpose, the President instructs you to say to her Majesty's government that he expects it will take prompt and effective measures to arrest their proceedings, and to discharge from service those persons now in it who were enlisted within the United States, or who left the United States under contracts made here to enter and serve as soldiers in the British army.

These measures of redress cannot, as the President conceives, be withheld on any other ground than the assertion of a right, on the part of Great Britain, to employ officers and agents to recruit her military forces within our limits, in defiance of our laws and our sovereign rights. It is not anticipated that any such pretext will be alleged: it certainly cannot be permitted to be a subject of discussion.*

The President instructs you to present the views contained in this despatch to her Britannic Majesty's government.

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

JAMES BUCHANAN, Esq., &c., &c.

Mr. Buchanan to Mr. Marcy.

[Extract.]

[No. 81.]

LEGATION OF THE UNITED STATES,
London, July 20, 1855.

SIR: * * * * *

I transmit the copy of a note received from Lord Clarendon, dated on the 16th instant, in answer to mine of the 6th instant, on the subject of the enlistment and employment of soldiers for the British army within the limits of the United States. In acknowledging the receipt of this note, I have informed his lordship that I shall have much satisfaction in transmitting a copy of it to the Secretary of State by the next steamer.

* * * * *

Yours, very respectfully,

JAMES BUCHANAN.

Hon. WILLIAM L. MARCY,
Secretary of State.

* This paragraph was omitted in the copy handed to Lord Clarendon.

Lord Clarendon to Mr. Buchanan.

FOREIGN OFFICE, *July 16, 1855.*

The undersigned, her Majesty's principal secretary of state for foreign affairs, has the honor to acknowledge the receipt of the note which Mr. Buchanan, envoy extraordinary and minister plenipotentiary of the United States, addressed to him on the 6th instant, respecting attempts stated to have recently been made to enlist, within the limits of the United States, soldiers for the British army.

The undersigned must, in the first instance, express the regret of her Majesty's government if the law of the United States has been in any way infringed by persons acting with or without any authority from them; and it is hardly necessary for the undersigned to assure Mr. Buchanan that any such infringement of the law of the United States is entirely contrary to the wishes and to the positive instructions of her Majesty's government.

The undersigned, however, thinks it right to state to Mr. Buchanan that some months ago her Majesty's government were informed, from various sources, that in the British North American possessions, as well as in the United States, there were many subjects of the Queen who, from sentiments of loyalty, and many foreigners who, from political feeling, were anxious to enter her Majesty's service, and to take part in the war. Her Majesty's government, desirous of availing themselves of the offers of these volunteers, adopted the measures necessary for making generally known that her Majesty's government were ready to do so, and for receiving such persons as should present themselves at an appointed place in one of the British possessions. The right of her Majesty's government to act in this way was incontestable; but, at the same time, they issued stringent instructions to guard against any violation of the United States law of neutrality; the importance and sound policy of which law have been so well expounded by Mr. Buchanan, in whose remarks upon it, as well as upon the foreign-enlistment bill of this country, her Majesty's government entirely concur.

It can scarcely be matter of surprise that, when it became known that her Majesty's government was prepared to accept these voluntary offers, many persons in various quarters should give themselves out as agents employed by the British government, in the hope of earning reward by promoting, though on their own responsibility, an object which they were aware was favorably looked upon by the British government. Her Majesty's government do not deny that the acts and advertisements of these self-constituted and unauthorized agents were, in many instances, undoubted violations of the law of the United States; but such persons had no authority whatever for their proceedings from any British agents, by all of whom they were promptly and unequivocally disavowed.

With respect to the proclamation by the lieutenant-governor of Nova Scotia, enclosed in Mr. Buchanan's note, the undersigned can assure Mr. Buchanan, with reference both to the character of Sir Gaspard le Marchant, and to the instructions he received, as well as to his correspondence on these instructions, that that officer is quite

incapable of intentionally acting against the law of the United States ; and in proof that he did not in fact do so, the undersigned begs leave to refer Mr. Buchanan to the legal decision given on the particular point adverted to by Mr. Buchanan, by Judge Kane, on the 22d of May last, in the United States circuit court at Philadelphia. The judge says : "I do not think that the payment of the passage from this country of a man who desires to enlist in a foreign port, comes within the act." [The neutrality act of 1818.] "In the terms of the printed proclamation, there is nothing conflicting with the laws of the United States. A person may go abroad, provided the enlistment be in a foreign place, not having accepted and exercised a commission. There is some evidence in Hertz's case that he did hire and retain, and therefore his case would have to be submitted to a jury. In Perkins's case there was testimony upon which a jury might convict. In Bucknell's case it appears that there was a conversation at which he was present, but there was no enlistment, or hiring, or retaining. The conversation related as to the practicability of persons going to Nova Scotia to enlist. If the rule I have laid down be correct, then the evidence does not connect him with the misdemeanor." "Mr. Bucknell is, therefore, discharged, and Messrs. Perkins and Hertz are remanded to take their trial."

As regards the proceedings of her Majesty's government, the undersigned has the honor to inform Mr. Buchanan that Mr. Crampton was directed to issue strict orders to British consuls in the United States to be careful not to violate the law, and Mr. Crampton was enjoined, above all, *to have no concealment from the government of the United States*. In the absence of Mr. Crampton from Washington, her Majesty's chargé d'affaires placed in Mr. Marcy's hands a despatch from the undersigned on this subject, expressly stating that "her Majesty's government would on no account run any risk of infringing this (the neutrality) law of the United States."

The undersigned has, however, the honor, in conclusion, to state to Mr. Buchanan that her Majesty's government—having reason to think that no precautionary measures, with whatever honesty they might be carried out, could effectually guard against some real or apparent infringement of the law, which would give just cause for complaint to the government of the United States—determined that all proceedings for enlistment should be put an end to, and instructions to that effect were sent out before the undersigned had the honor to receive Mr. Buchanan's note, as the undersigned need hardly say that the advantage which her Majesty's service might derive from enlistment in North America would not be sought for by her Majesty's government, if it were supposed to be obtained in disregard of the respect due to the law of the United States.

The undersigned has the honor to renew to Mr. Buchanan the assurance of his highest consideration.

CLARENDON.

Hon. JAMES BUCHANAN.

Mr. Buchanan to Mr. Marcy.

[Extract.]

[No. 83.]

LEGATION OF THE UNITED STATES,
London, August 3, 1855.

SIR: * * * * *

You will observe, by the London Times of this morning, that Lord Palmerston last night in the House of Commons, in answer to an inquiry of Mr. Thomas Milnor Gibson, stated as follows: "With regard to the question which arose in the United States, [respecting the enlistment or engagement of soldiers for the foreign legion,] I beg to inform the right honorable gentleman that a similar arrangement [to that at Heligoland] was made at Halifax, by which any persons going there, from whatever quarter, might be enrolled; but it appearing that that had led to questions within the territory of the United States as to whether or not the law of that country had been violated, her Majesty's government, being desirous that no such questions should by possibility arise, has put an end to the enlistment of forces which used to take place at Halifax."

* * * * *

Yours, very respectfully,

JAMES BUCHANAN.

Hon. WILLIAM L. MARCY,
Secretary of State.

Mr. Marcy to Mr. Crampton.

DEPARTMENT OF STATE,
Washington, September 5, 1855.

SIR: Having ascertained that the scheme to raise recruits for the British army within the limits of the United States was vigorously prosecuted after our first conversation on the subject, and that officers of her Britannic Majesty's government were taking an active part in it, notwithstanding the disapprobation of this government was well known, the President directed Mr. Buchanan, the United States minister at London, to be instructed to bring the subject to the attention of Lord Clarendon, her Majesty's principal secretary of state for foreign affairs. Lord Clarendon, in his reply to Mr. Buchanan's note to him of the 6th of July last, admits that her Majesty's government did concur in and authorize some measures to be taken to introduce persons resident in the United States into the British army, but places the justification of the proceedings thus authorized upon the narrow ground that "stringent instructions" were issued to the British officers and agents to guard against any violation of the United States law of neutrality; and his lordship expresses a confident opinion that these instructions have been scrupulously observed.

He is fully aware that volunteers have embarked in the scheme, who have violated our laws. Though it was anticipated, as he confesses, that such volunteers, assuming to be agents of her Majesty's government, would take a part in carrying out the authorized scheme of drawing recruits from the United States, and would be likely to infringe our laws ; yet as they were, as he alleges, self-constituted and unauthorized agents, he assumes that no responsibility for their conduct attaches to her Majesty's government or its officers.

In authorizing a plan of recruitment which was to be carried out in part within our territories, the British government seems to have forgotten that the United States had sovereign rights, as well as municipal laws, which were entitled to its respect. For very obvious reasons, the officers employed by her Majesty's government in raising recruits from the United States would, of course, be cautioned to avoid exposing themselves to the penalties prescribed by our laws ; but the United States had a right to expect something more than precautions to evade those penalties ; they had a right to expect that the government and officers of Great Britain would regard the policy indicated by these laws, and respect our sovereign rights as an independent and friendly power.

It is exceedingly to be regretted that this international aspect of the case was overlooked. As to the officers of the British government, it is not barely a question whether they have or have not exposed themselves to the penalties of our laws, but whether they have in their proceedings violated international law and offered an affront to the sovereignty of the United States. As functionaries of a foreign government, their duties towards this country as a neutral and sovereign power are not prescribed by our legislative enactments, but by the law of nations. In this respect their relation to this government differs from that of private persons. Had there been no acts of Congress on the subject, foreign governments are forbidden by that law to do anything which would in any manner put to hazard our position of neutrality in respect to the belligerents.

The information which has been laid before the President has convinced him that the proceedings resorted to for the purpose of drawing recruits from this country for the British army have been instigated and carried on by the active agency of British officers, and that their participation therein has involved them in the double offence of infringing our laws and violating our sovereign territorial rights.

If there were sufficient reasons to believe that by skilfully interposing private persons as ostensible actors in carrying out their arrangements, these officers have successfully shielded themselves from the penalties of our laws, still they, as well as their government, if they have acted by its authority, are responsible as parties to a procedure which constitutes an international offence of such a grave character as cannot be passed unnoticed by this government. While strenuously exerting its authority, as it has frequently done, and is still doing, to prosecute and punish its own citizens for infringing its obligations of neutrality, it could not allow itself to pass lightly over the like offence committed by foreigners acting as the authorized agents of another government.

The case which the United States feel bound to present to her

Majesty's government involves considerations not embraced in Lord Clarendon's reply to Mr. Buchanan's note. The question is not whether that government has authorized, or any of its officers have done, acts for which the punishment denounced by our laws can be inflicted; but whether they participated in any form or manner in proceedings contrary to international law, or derogatory to our national sovereignty. It is not now necessary, therefore, to consider what technical defence these officers might interpose if on trial for violating our municipal laws.

This whole scheme of raising recruits for the British army within or from the United States, together with the agents and means used to carry it out, is now in the way of being developed, and I regret that the disclosures already made appear to implicate so many of her Majesty's officers resident as well in the United States as in the adjacent British provinces. The President perceives with much regret that the disclosures implicate you in these proceedings. He has, therefore, preferred to communicate the views contained in this note to her Majesty's government through you, her representative here, rather than through our minister at London. The information in his possession does not allow him to doubt that yourself, as well as the lieutenant-governor of Nova Scotia, and several civil and military officers of the British government of rank in the provinces, were instrumental in setting on foot this scheme of enlistment; have offered inducements to agents to embark in it, and approved of the arrangements for carrying it out, which embraced various recruiting establishments in different cities of the United States, and made liberal provision for funds to be used as inducements for persons residing therein to leave the country for the purpose of enlisting in the British military service. These arrangements are utterly incompatible with any pretence that they were designed merely to afford facilities to British subjects or other foreigners in this country to carry out their wishes, prompted purely by "sentiments of loyalty" or "political feeling," to participate with the allies in the existing war in Europe.

The information in the possession of this government is so well established by proof, and corroborated by so many public acts, that the President feels warranted in presenting to the British government this conduct of her Majesty's officers, as disrespectful to the United States and incompatible with the friendly relations between the two countries.

Among the solemn duties imposed upon the President is that of maintaining and causing to be respected the sovereign rights of the United States, and to vindicate before the world their good faith in sustaining neutral relations with other powers; and from this duty he will not allow himself to be diverted, however unpleasantly it may affect his personal or official relations with individuals.

The course which the President would deem it proper to take towards the implicated officers within the United States, depends in some measure upon their relation to their government in this matter. Lord Clarendon's note of the 16th of July does not make it quite clear that her Majesty's government is prepared to disavow the acts complained of, and to throw the entire responsibility of them upon its

officers and agents. "Stringent instructions" were undoubtedly given to her Majesty's officers "to guard against any violation of the United States law of neutrality;" but it does not appear that respect for our territorial sovereignty, or the well-known policy of the United States as a neutral, not specifically embraced in our municipal enactments, was enjoined. The instructions might, therefore, be formally complied with, and these officers at the same time do acts which constitute an offence against our rights as a sovereign power. Such acts it is believed they have committed; whether with or without the approval or countenance of their government does not authoritatively appear.

Lord Clarendon, it is apprehended, was not well informed as to the proceedings which had taken place in regard to the recruitments in this country, when he expressed the opinion that the persons engaged in carrying them out, whose conduct he does not deny was illegal, were self-constituted and unauthorized agents. This government has good reasons for believing that these agents had the direct sanction of British officers for their conduct, and were employed by them.

If these officers are sustained in what they have done, and authorized others to do in this matter, by their government, the President will look to that government in the first instance, at least for a proper measure of satisfaction; but if their conduct is disavowed, and declared to have been contrary to the instructions and without the countenance or sanction of her Majesty's government, the course imposed upon him by a sense of duty will in that case be changed.

The object of this note is to ascertain how far the acts of the known and acknowledged agents of the British government, done within the United States, in carrying out this scheme of recruiting for the British army, have been authorized or sanctioned by her Majesty's government.

I avail myself of this opportunity to renew to you, sir, the assurance of my high consideration.

W. L. MARCY.

JOHN F. CRAMPTON, Esq., &c., &c., &c.

Mr. Crampton to Mr. Marcy.

WASHINGTON, September 7, 1855.

SIR: I have the honor to acknowledge the receipt of your note of the 5th instant, upon the subject of alleged recruitments in the United States of soldiers for the British army.

As your note, although addressed to myself, refers in a great measure to a correspondence which has taken place between Lord Clarendon and Mr. Buchanan, on the same subject, I have thought it expedient to defer replying at length to your present communication, until I shall have been more fully put in possession of the views of her Majesty's government, in regard to all the matters to which it relates.

I shall then do myself the honor of addressing to you a further communication; and I confidently trust that I shall be enabled alto-

gether to remove the unfavorable impression which has been created as to the motives and conduct of her Majesty's government, and their officers, including myself, in regard to this matter.

I avail myself of this opportunity to renew to you, sir, the assurance of my high consideration.

JOHN F. CRAMPTON.

Hon. W. L. MARCY, &c., &c., &c.

Mr. Marcy to Mr. Buchanan.

[No. 107.]

DEPARTMENT OF STATE,

Washington, September 8, 1855.

SIR: In my private letter of the 2d instant, I informed you that I had prepared an official note, relative to the British enlistments within the United States, to which British officers were auxiliary. As Mr. Crampton was personally implicated, it was determined to send it to him, although other communications on the subject had been addressed to you.

The note was sent to Mr. Crampton on the 5th instant, and yesterday I received one from him, in which he informs me that he shall send my note to his government for directions as to the reply.

I herewith transmit to you copies of the notes above alluded to, together with copies of a part of the proofs in possession of this government on the subject, implicating her Britannic Majesty's officers. I do not believe Strobel's statement can be successfully impeached. I am quite sure it cannot be in its essential parts. Lord Clarendon must have been misinformed as to the actual state of things here, when he assured you that the persons who had violated our neutrality law were self-constituted and unauthorized agents. If the British government choose to take pains to ascertain what disposition has been made of the large sums of money expended in carrying out the scheme of enlistments in this country, it will find that a considerable amount of it has gone into the hands of these agents, and that it was paid to them for the purpose of being expended in the United States, in raising recruits for the British military service.

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

JAMES BUCHANAN, Esq., &c., &c., &c.

Mr. Buchanan to Mr. Marcy.

[Extract.]

[No. 93.]

LEGATION OF THE UNITED STATES,

London, September 28, 1855.

SIR: I have the honor to acknowledge the receipt of your despatch No. 107, of the 8th instant, with the accompanying documents.

I transmit to you the copy of a note of yesterday's date, received this morning from Lord Clarendon, in reference to your note to Mr. Crampton of the 5th instant, on the subject of British recruitments in the United States, together with a copy of my note of this date acknowledging its receipt. I have been thus prompt in notifying his lordship that I had no instructions which would warrant me in interfering with the correspondence commenced between Mr. Crampton and yourself at Washington, so that there might be no reason for any delay on the part of the British government in sending their instructions to that gentleman. I doubt very much, however, whether the confident trust expressed by him in his note to you of the 7th instant will be realized, that after having been more fully put into possession of the views of his government he "shall be enabled altogether to remove the unfavorable impression which has been created as to the motives and conduct of her Majesty's government and their officers, including myself, [himself,] in regard to this matter." Lord Clarendon's note to me of yesterday renders it improbable that Mr. Crampton will receive any such instructions; and I doubt whether the expression of his confident trust to this effect has received the approbation of his lordship.

I also transmit a copy of my note of the 18th July last to Lord Clarendon, to which he refers in his note to me of yesterday. I communicated to you the substance of this note in my No. 81, of the 20th July, though at that time I did not deem it necessary to send a full copy.

I have not time at present, before the closing of the bag, to make some observations which I had intended to do on the subject. I may resume it next week.

* * * * *

Yours, very respectfully,

JAMES BUCHANAN.

Hon. WILLIAM L. MARCY,
Secretary of State.

Lord Clarendon to Mr. Buchanan.

FOREIGN OFFICE, *September 27, 1855.*

Mr. Buchanan, envoy extraordinary and minister plenipotentiary of the United States at this court, will probably have received from his government a copy of a letter which Mr. Marcy, Secretary of State of the United States, addressed to Mr. Crampton, her Britannic Majesty's envoy extraordinary and minister plenipotentiary in the United States, on the 5th of this month, on the subject of the communication which the undersigned, her Majesty's principal secretary of state for foreign affairs, had the honor to make to Mr. Buchanan on the 16th of July, in reply to his note of the 6th of that month, complaining of the proceedings of British agents and British colonial authorities in raising within the States of the Union recruits for the British

military service, in violation (as was alleged) of the act of Congress of the 20th of April, 1818.

The undersigned had hoped, from the answer which he received from Mr. Buchanan on the 18th of July, that the explanations and assurances which he had given on this subject in his note of the 16th of that month would have proved as satisfactory to the government of the United States as they appeared to be to Mr. Buchanan; and it was therefore with no less disappointment than regret that her Majesty's government perused the letter addressed by Mr. Marcy to Mr. Crampton on the 5th instant, of which the undersigned encloses a copy to Mr. Buchanan, in case he should not have received it from Washington.

In this letter, Mr. Marcy, laying less stress than Mr. Buchanan did upon the alleged infraction of the municipal laws of the United States, dwells chiefly upon the point, which was but slightly adverted to by Mr. Buchanan, of an assumed disregard of the sovereign rights of the United States on the part of the British authorities or the agents employed by them.

Her Majesty's government have no reason to believe that such has been the conduct of any persons in the employment of her Majesty, and it is needless to say that any person so employed would have departed no less from the intentions of her Majesty's government by violating international law, or by offering an affront to the sovereignty of the United States, than by infringing the municipal laws of the Union, to which Mr. Buchanan more particularly called the attention of the undersigned. Her Majesty's government feel confident that even the extraordinary measures which have been adopted in various parts of the Union to obtain evidence against her Majesty's servants, or their agents, by practices sometimes resorted to under despotic institutions, but which are disdained by all free and enlightened governments, will fail to establish any well-founded charge against her Majesty's servants.

The British government is fully aware of the obligations of international duties, and is no less mindful of those obligations than is the government of the United States. The observance of those obligations ought, undoubtedly, to be reciprocal; and her Majesty's government do not impute to the government of the United States, that while claiming an observance of those obligations by Great Britain, they are lax in enforcing a respect for those obligations within the Union.

But as this subject has been mooted by Mr. Marcy, her Majesty's government cannot refrain from some few remarks respecting it.

The United States profess neutrality in the present war between the Western Powers and Russia; but have no acts been done within the United States, by citizens thereof, which accord little with the spirit of neutrality? Have not arms and ammunition, and warlike stores of various kinds, been sent in large quantities from the United States for the service of Russia? Have not plots been openly avowed, and conspiracies entered into without disguise or hindrance, in various parts of the Union, to take advantage of the war in which Great Britain is engaged, and to seize the opportunity for promoting insurrection in

her Majesty's dominions, and the invasion thereof by an armed force proceeding from the United States?

Her Majesty's government have been silent on these matters, which they did not consider indicative of the general feelings of the American people; for, remembering the many ties and sympathies which connect the people of the United States with the two powerful nations who are engaged in the present contest with Russia, they were convinced that a free, enlightened, and generous race, such as the citizens of the great North American Union, must entertain on the important questions at issue, sentiments in harmony with those which animate not only the British and French nations, but the great mass of the nations of Western Europe; and her Majesty's government would not have adverted to the exceptional course pursued by a certain number of individuals, if it had not been for the above-mentioned statements in Mr. Marcy's note.

But her Majesty's government think themselves entitled to claim the same credit for sincerity of purpose and uprightness of conduct which they readily allow to the government of the United States; and to expect that their assurance should be received, that as they have enjoined on all her Majesty's servants a strict observance of the laws of the United States, so they have no reason to believe that any of her Majesty's servants, or any agents duly authorized by those servants, have disregarded those injunctions in respect to the matters which form the subject of this note.

The undersigned requests Mr. Buchanan to accept the assurance of his highest consideration.

CLARENDON.

Hon. JAMES BUCHANAN, &c., &c., &c.

Mr. Buchanan to Lord Clarendon.

LEGATION OF THE UNITED STATES,
London, September 28, 1855.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States, has the honor to acknowledge the receipt of the note, dated on the 27th instant, from the Earl of Clarendon, her Majesty's principal secretary of state for foreign affairs, in reference to the note of the 5th instant, addressed by Mr. Marcy, the Secretary of State, to Mr. Crampton, her Britannic Majesty's minister at Washington, on the subject of the enlistment and engagement of soldiers for the British army within the limits of the United States; and he will not fail to transmit to Washington a copy of his lordship's note by to-morrow's steamer.

The undersigned forbears to make any observations on this note, or to interfere in any manner with the correspondence commenced at Washington between the Secretary of State and Mr. Crampton, as he has received no instructions which would warrant him in so doing.

The undersigned has the honor to renew to the Earl of Clarendon the assurance of his distinguished consideration.

JAMES BUCHANAN.

The Right Honorable the EARL OF CLARENDON,
&c., &c., &c.

Mr. Buchanan to Lord Clarendon.

LEGATION OF THE UNITED STATES,
London, July 18, 1855.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States, has the honor to acknowledge the receipt of the note which the Earl of Clarendon, her Majesty's principal secretary of state for foreign affairs, addressed to him on the 16th instant, in answer to his note of the 6th instant, on the subject of the enlistment and employment of soldiers for the British army within the United States; and the undersigned will have much satisfaction in transmitting a copy of his lordship's note to the Secretary of State by the next steamer.

The undersigned has the honor to renew to the Earl of Clarendon the assurance of his distinguished consideration.

JAMES BUCHANAN.

The Right Honorable the EARL OF CLARENDON,
&c., &c., &c.

Mr. Marcy to Mr. Buchanan.

[No. 113.]

DEPARTMENT OF STATE,
Washington, October 1, 1855.

SIR: I herewith send you papers containing the report of the trial of Hertz, for a violation of our neutrality laws, by enlisting soldiers for the British army.

The testimony shows that Mr. Crampton and several other British officials are deeply implicated in the transaction. Lord Clarendon's note, in answer to yours bringing the subject to his notice, assumed that none of her Majesty's officers had been in any way engaged in the plan of recruiting within the United States. Had the facts been as he assumed them to be, and this government had had no reason to believe that the measure was not designed to draw recruits from the United States, his lordship's reply would have been satisfactory.

Subsequent developments show that Lord Clarendon was misinformed as to the true state of the case.

The second despatch to you on the subject showed that the ground of grievance was not confined to the mere fact of a violation of our neutrality laws by British officers. It presented the case as a national offence committed by them, irrespective of those laws. These officers

may have contrived to shield themselves from the penalties of our laws, and yet have committed an offence against our sovereign territorial rights. This latter aspect of the case was distinctly presented in my last despatch to you on the subject. It was this view of the case which the President wished you to present to her Majesty's minister of foreign relations.

It is important, with reference to proceedings against British officers residing within the United States, that the President should know whether the government of Great Britain mean to justify or condemn their conduct.

The disclosures which have been made leave no doubt of the fact that some of these officers have taken an active part in raising recruits in the United States. If their conduct was unauthorized and is condemned, it is proper that this government should be apprized of the fact, as well as of the punishment which has been, or is proposed to be, inflicted upon them; but if, on the other hand, the British government approve of the course pursued by its officers, it is important that its determination in that respect should be known.

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

JAMES BUCHANAN, Esq., &c., &c., &c.

Mr. Buchanan to Mr. Marcy.

[Extract.]

[No. 94.]

LEGATION OF THE UNITED STATES,
London, October 3, 1855.

SIR: * * * * * * * *

In my last despatch, No. 93, of the 28th ultimo, I stated that I had not then time, before the closing of the bag, to make the observations I had intended on the subject to which it refers, but intimated that I might do so this week.

The alleged agency of Mr. Crampton in the recruitment of British soldiers within the limits of the United States presents a serious aspect. From the information contained in your despatch (No. 91) of the 9th June, we had reason to expect a different course of conduct on his part. I need scarcely say that, had I been informed that her Britannic Majesty's representative at Washington had placed himself in the position attributed to him by Captain Strobel, I should not have expressed to Lord Clarendon my satisfaction in transmitting to you his note of the 16th of July.

It is remarkable that Lord Clarendon, in his note to myself of the 27th ultimo, whilst commenting on your note of the 5th September to Mr. Crampton, should have been totally silent in regard to that gentleman after what you had said respecting his conduct.

I cannot but regard as offensive the remark of his lordship on "the extraordinary measures which," he alleges, "have been adopted in various parts of the Union to obtain evidence against her Majesty's servants, or their agents, by practices sometimes resorted to under

despotic institutions, but which are disdained by all free and enlightened governments ;” though he would doubtless say these were not intended to apply in an offensive sense to the American government. He probably alludes to occurrences at Cincinnati and other places.

If arms and ammunition, and warlike stores of various kinds, have been sent in large quantities from the United States for the service of Russia, as his lordship alleges, this is nothing more than our citizens had a right to do, subject to the risk under the law of contraband. Similar articles have been sent from the United States to Great Britain in large quantities. Besides, at the present moment, and ever since the commencement of the present war, many of our vessels have been engaged as transports, by Great Britain and France, to carry troops and munitions of war to the Crimea. When this business first commenced, I was applied to by masters and agents of American vessels for information as to what penalties they would incur by engaging in it, and I stated to them that their vessels would be lawful prize if captured by the Russians. For this reason I advised them to obtain an indemnity from the government employing them against this risk.

The “plots” to which his lordship refers relate chiefly, I presume, (for I do not know,) to the proceedings and address of the “Massachusetts Irish Emigrant Aid Society,” at Boston, on the 14th August. These were republished in the London Times on the 11th September ; and you will find an editorial, on this subject, on the following day.

* * * * *

Yours, very respectfully,

JAMES BUCHANAN.

Hon. WILLIAM L. MARCY,
Secretary of State.

Mr. Buchanan to Mr. Marcy.

[Extract.]

LEGATION OF THE UNITED STATES,
London, October 30, 1855.

SIR : * * * * *

But I have not since taken any action upon your No. 102, for the plainest reason. I had, previously to its arrival, transmitted to you a copy of Lord Clarendon's note, already referred to, of the 16th July, on the subject of the enlistment and employment of soldiers for the British army within our limits, and had informed his lordship, in acknowledging the receipt of this note, that I should have much satisfaction in transmitting a copy of it to the Secretary of State. Of course it would have been improper for me to take any new step in this matter until I should learn whether this note would prove satisfactory to yourself. Again: your No. 102 states that, after many months had elapsed, British officers were still proceeding to violate our laws, and persist “in carrying on the obnoxious scheme without any open disapproval by the home government, or any attempt

to arrest it;" and one of the two express instructions which the President gives me in conclusion is, "to say to her Majesty's government that he expects it will take prompt and effective measures to arrest their proceedings." Now, these measures had been already adopted, but could not possibly have been known to you. Lord Clarendon's note had entirely changed the aspect of the case from the view which you took of it, and must necessarily have taken of it, at the date of your No. 102. The general tenor of this note—its disavowals and its regrets—were certainly conciliatory, and the concluding paragraph, declaring that all proceedings for enlistments in *North America* had been put an end to by her Majesty's government, for the avowed reason that the advantages which her Majesty's service might derive from such enlistments would not be sought for by her Majesty's government if it were supposed to be obtained in disregard of the respect due to the law of the United States, was highly satisfactory. It was for these reasons that I expressed the satisfaction I would have in communicating it to you. Then came the declaration of Lord Palmerston to the same effect in the House of Commons, on the 2d August, in which he explicitly declared that, in order to avoid questions with the United States, the government "had put an end to the enlistment of forces which used to take place at Halifax." This declaration was, to my knowledge, received with much satisfaction by Mr. Milnor Gibson, who had made the inquiry of Lord Palmerston, as well as by many other liberal members of Parliament. Very different, indeed, had been the conduct of the British government in this respect towards certain continental states.

I can assure you that I did not entertain the most remote idea that this question had not been satisfactorily adjusted until I learned the complicity of Mr. Crampton in the affair. This was officially communicated to me in your despatch No. 107, of the 8th, received on the 24th of September, with a copy of your letter to Mr. Crampton, on the 5th, and his answer of the 7th of the same month. From these, it appears you had thought it due to Mr. Crampton, no doubt properly, to take the affair in hand yourself, and this you have done in an able manner in your letter to that gentleman. Thus much I have deemed necessary to place myself *rectus in curia*.

Yours, very respectfully,

JAMES BUCHANAN.

Hon. WILLIAM L. MARCY,
Secretary of State.

Mr. Marcy to Mr. Buchanan.

[No. 118.]

DEPARTMENT OF STATE,
Washington, October 13, 1855.

SIR: The copy of Lord Clarendon's note of the 27th ultimo, which you transmitted to the department with your despatch No. 93, has been received. I have laid it before the President, and am directed to make the following reply:

The case presented to her Britannic Majesty's government, in my

note to Mr. Crampton, contained a distinct charge that British officers and agents had infringed our laws enacted for the maintenance of our duties of neutrality to friendly powers, and that some of these officers and agents in the employment of their government within the United States, and others, residents in the neighboring British provinces, had also violated our sovereign territorial rights, by being engaged in recruiting for the British army within our territories. The mode by which this recruiting had been carried on, and the connexion of these with it, were clearly stated.

A scheme for that purpose had been arranged by British officers. Agents had been employed by them to open rendezvous in our principal cities, numerous engagements had been made with recruits, money had been paid to them, and liberal promises of other considerations offered as an inducement for entering into the British service, and they had been taken out of the United States by means furnished by persons in the employment of the British government.

It was also stated that the evidence establishing these allegations against the officers and agents of the British government was of such a character that this government could not reasonably doubt its accuracy.

The President has given to the reply of Lord Clarendon, her Britannic Majesty's principal secretary of state for foreign affairs, to the case thus presented by this government, the full consideration it is entitled to on account of the high source from which it emanates, and he regrets to be obliged to adopt the conclusion that it is not satisfactory.

This government had a right to look for something more in that reply than an expectation on the part of her Majesty's government "that their assurance should be received that, as they have enjoined on all her Majesty's servants a strict observance of the laws of the United States, so they have no reason to believe that any of her Majesty's servants, or any agents duly authorized by those servants, have disregarded those injunctions in respect to the matters which form the subject of this [Lord Clarendon's] note." This is a very laconic, but certainly a very unsatisfactory answer to the demand of redress by this government for a violation of its laws and an affront to the sovereign rights of this country.

This conclusion adopted by Lord Clarendon is preceded by a general objection to all the evidence by which the charges against the British officers and agents are sustained.

Lord Clarendon declares that the "extraordinary" measures adopted to obtain evidence against her Majesty's servants or their agents, though "sometimes resorted to under despotic institutions, are disdained by all free and enlightened governments." This serious imputation is accompanied with no specification, or even vague allusion to the condemned measures, nor is the government favored by his lordship with any information to guide conjecture as to his meaning.

The only reply which can be made to an allegation so exceedingly indefinite is, that this government has authorized or used no other but ordinary and legitimate modes of obtaining evidence against British officers; nor has it any reason to believe or suspect that any persons, with or without its countenance, have adopted any measures

whatever for obtaining such evidence, which would not find abundant sanction in the established practice of the administration of penal law in Great Britain. It is a significant fact, that on the trials in Philadelphia and New York, in which the accused were convicted for being engaged in carrying out the scheme of recruitments within the United States, no such objection as that by which Lord Clarendon would fain set aside all the evidence as worthless was interposed or made to appear, though some of her Majesty's officers were present at these trials, took a deep interest in the defence of the criminals, and were directly implicated by the proofs as participants in the offence.

Repelling this charge of imitating "despotic institutions," and doing what is "disdained by all free and enlightened governments," it is proper to remark, that, if it were sustainable, it would not warrant the conclusion which Lord Clarendon has deduced from it; which is, that the evidence "will fail to establish any well-founded charge against her Majesty's government." It is far from being certain that the measures adopted for obtaining the evidence, even if they had been extraordinary and exceptionable, would invalidate it, for it might still be of such a character as to carry conviction to the mind of the truth of the allegations.

Should her Britannic Majesty's government see fit to disclose any specific objection to the mode by which the evidence has been obtained, or attempt in any other way to impeach it, this government will then feel called on to vindicate its course, and show its ability to sustain its charges, by evidence to which no just exception can be taken. Neither the promises on which Lord Clarendon founds his argument for setting aside the testimony against the implicated British officers, nor the inference he deduces from them, can be admitted by this government.

Lord Clarendon must, I think, intend to be understood as impeaching our neutrality in the present war, though there appears to be some indistinctness in his language. In commenting upon so grave a charge, coming from so respectable an authority, it is but fair to quote his own words:

"The United States profess neutrality in the present war between the Western Powers and Russia; but have no acts been done within the United States, by citizens thereof, which accord little with the spirit of neutrality? Have not arms and ammunition, and warlike stores of various kinds, been sent in large quantities from the United States for the service of Russia?"

It is certainly a novel doctrine of international law, that traffic by citizens or subjects of a neutral power with belligerents, though it should be in arms, ammunition, and warlike stores, compromises the neutrality of that power. That the enterprise of individuals, citizens of the United States, may have led them in some instances, and to a limited extent, to trade with Russia, in some of the specified articles, is not denied; nor is it necessary that it should be, for the purpose of vindicating this government from the charge of having disregarded the duties of neutrality in the present war.

Lord Clarendon is most respectfully asked to look on the other side of the case. Have the citizens of the United States had no traffic with Great Britain, during the present war, in arms, ammunition, and

warlike stores? It must be known to his lordship, for it is a matter of notoriety, that our citizens, in their character as individuals, have rendered substantial aid to both England and France in the prosecution of hostilities against Russia. Though Lord Clarendon may have momentarily forgotten, he will readily call to mind the fact, that a large number of our merchant ships have been engaged, from the commencement of the war down to this time, in transporting troops and munitions of war for Great Britain, from British ports, either in the United Kingdom or the Mediterranean, to the Crimea; to say nothing of the numerous American merchant vessels employed in conveying troops and munitions of war from the ports of France.

Private manufacturing establishments in the United States have been resorted to for powder, arms, and warlike stores, for the use of the allies; and immense quantities of provisions have been furnished to supply their armies in the Crimea. In the face of these facts, open and known to all the world, it certainly was not expected that the British government would have alluded to the very limited traffic which some of our citizens may have had with Russia, as sustaining a solemn charge against this government for violating neutral obligations towards the allies. Russia may have shared scantily, but the allies have undoubtedly partaken largely, in benefits derived from the capital, the industry, and the inventive genius of American citizens in the progress of the war; but, as this government has had no connexion with these proceedings, neither belligerent has any just ground of complaint against it.

Lord Clarendon further asks: "Have not plots been openly avowed, and conspiracies entered into; without disguise or hindrance, in various parts of the Union, to take advantage of the war in which Great Britain is engaged, and to seize the opportunity for promoting insurrection in her Majesty's dominions, and the invasion thereof by an armed force proceeding from the United States?"

This government replies, that it has no knowledge or belief whatever of the existence of any such plots or conspiracies. It has only seen it stated in English newspapers, that a few persons from Ireland had congregated together at Boston, or in its vicinity, adopted some resolutions in relation to the condition of their countrymen at home, and made some suggestions in relation to what they regarded as an amelioration of the condition of the land of their birth. It was not here considered a noticeable affair, and only became known to any member of this government by the comments upon it which appeared in the British press. On inquiry, it is ascertained that a very few individuals were present at that meeting, and it was probably the result of the British scheme of recruiting which was at that time vigorously prosecuted in Boston. It was a proceeding no more noticeable, and far less harmful, than the daily machinations of foreign fugitives collected in London against the governments of their native countries. Those who assembled in Boston will probably rejoice at having effected much more than they anticipated when they shall learn that their proceedings have attracted the attention of her Britannic Majesty's government, and been regarded as a disturbing movement against the British dominions.

If the British government believe that plots and conspiracies are

really on foot in any part of the United States, and will furnish any clue by which they can be detected, it may be assured that this government will act promptly and efficiently in bringing them to light, and punishing the offenders; and it will not consider itself in any way relieved from doing its whole duty in this respect by what has taken place here in reference to recruitments for the British army.

This government is not less mindful than that of Great Britain or France of the many ties and sympathies which connect the people of the United States with those two powerful nations, and it will go as far and do as much as either to strengthen and cherish those sentiments, in the hope of making them available for all legitimate purposes to maintain friendly relations, and increase social and commercial intercourse; but Great Britain ought not to indulge the expectation that those sentiments can be permitted to draw the United States over the line which marks their duty to themselves as well as to the belligerents and all friendly powers.

It would be an inexcusable perversion of such sentiments if they were permitted to induce this government to pass unnoticed the violation of its laws, or to throw open its territories to the recruiting officers of any foreign power.

The expectation that the United States would yield to such pretensions, or forbear to claim redress when such an affront to their sovereign rights had been offered, could only be founded on a belief that they were prepared to abandon their position of strict neutrality, and run the hazard of plunging into the struggle which now convulses Europe.

Supported as this government is in the charge made against British officers and agents, of having infringed our laws and violated our sovereign territorial rights, and being able to sustain that charge by competent proof, the President would fail in due respect for the national character of the United States, and in his duty to maintain it, if he did not decline to accept, as a satisfaction for the wrongs complained of, Lord Clarendon's assurance that these officials were enjoined a strict observance of our laws, and that he does not believe that any of them have disregarded the injunction.

This government believes, and has abundant proof to warrant its belief, that her Britannic Majesty's officers and agents have transgressed our laws and disregarded our rights, and that its solemn duty requires that it should vindicate both by insisting upon a proper satisfaction. The President indulges the hope that this demand for redress will be deemed reasonable, and be acceded to by her Britannic Majesty's government.

This government has indicated the satisfaction which it believes it has a right to claim from the British government in my despatch to you of the 15th of July last.

The President directs you to urge upon her Britannic Majesty's government the views contained in that despatch, and to read this to Lord Clarendon, and deliver a copy if he should desire it.

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

JAMES BUCHANAN, Esq., &c., &c., &c.

Mr. Buchanan to Mr. Marcy.

[Extract.]

[No. 99.]

LEGATION OF THE UNITED STATES,
London, November 2, 1855.

SIR: * * * * * * *

According to the appointment mentioned in my last despatch, I met Lord Clarendon yesterday afternoon at the Foreign Office. After some unimportant conversation, I told him that on my return to the legation on Monday last I found a despatch from yourself on the recruitment question, which I had been instructed to read to him, and furnish him a copy if requested. He said he had also despatches from Washington on the same subject. I then stated that Mr. Crampton having promised, in his note of the 7th of September, to address you again after hearing from his lordship, I should be glad to know whether he had furnished instructions to Mr. Crampton for this purpose. He told me he had not; that he had pursued the usual diplomatic course in such cases, in addressing me a note in answer to the note addressed by you to Mr. Crampton. I said, Very well; then your note to me of the 27th of September is the answer to Mr. Marcy's note to Mr. Crampton of the 5th of that month, and the despatch which I was about to read to him was your answer to his note to me of the 27th of September. To this he assented.

I then read to him your despatch to me of the 13th of October, to which he listened throughout with great apparent attention. After the reading he requested a copy, and I delivered him the duplicate which you had forwarded. He then asked what was the nature of the satisfaction from the British government to which you had referred in your despatch just read. I said that the best mode of giving him the information was to read to him this despatch of yours to me, which I accordingly did, * * * * of which he also desired a copy, and I promised to furnish it. I had prepared myself to state in conversation the substance of what this despatch required from the British government; but having the despatch with me, I thought it better at the moment, in order to prevent all misapprehension, to read it to him, as it had evidently been prepared with much care. I have sent him a copy of it to-day. * * * * * *

I then stated, his lordship would observe that the government of the United States had two causes of complaint: the one was such violations of our neutrality laws as might be tried and punished in the courts of the United States; the other—to which I especially desired to direct his attention—consisted in a violation of our neutrality, under the general law of nations, by the attempts which had been made by British officers and agents, not punishable under our municipal law, to draw military forces from our territory to recruit their armies in the Crimea. As examples of this, I passed in review the conduct of Mr. Crampton, of the lieutenant-governor of Nova Scotia, and the British consuls at New York and Philadelphia.

I observed that, in his note of the 16th July, he had assured me

that the individuals engaged in recruiting in the United States acted upon their individual responsibility, and had no authority for their proceedings from any British officials, by whom their conduct was condemned. In addition, he had stated that instructions had been sent out to Sir Gaspard le Marchant to stop all enlistments in North America. [Yes, his lordship observed, they were sent out on the 22d of June last.] I said I had expressed the satisfaction which I felt in transmitting this note to Mr. Marcy, and was, therefore, sorry to say satisfactory proof existed that Mr. Crampton and other British officers had, before and since, been engaged in aiding and countenancing these proceedings and recruitments. In fact, Wagner had been convicted at New York for a violation of our neutrality law committed at so late a period as the 3d of August.

Lord Clarendon sat silent and attentive whilst I was making these remarks, and then took from his drawer several sheets of paper, containing extracts from a despatch of Mr. Crampton, (received, as I understood, by the last steamer,) some of which he read to me.

Mr. Crampton emphatically denies the truth of Strobel's testimony and Hertz's confession, as well as all complicity in the recruitments. I expressed my surprise at this, and said that Strobel's character was respectable, so far as I had ever learned, and that his testimony was confirmed by several documents, implicating Mr. Crampton, which had been given in evidence on the trial of Hertz. I told him he would see this on a perusal of the trial itself, of which I gave him a copy.

I asked him whether he intended I should communicate to you my recollection of the particular extracts he had read to me from Mr. Crampton's despatch. He said he would prefer I should not; that he would examine and sift the subject with great care, and preferred to present these to you in his own language.

In concluding this part of the conversation, Lord Clarendon declared, in a sincere and emphatic manner, that nothing had been further from the intention of the British government than to violate the neutrality of the United States, or to give them cause of offence. He could also declare, in regard to himself personally, that he would not act in such a manner towards one of the weakest powers—not even towards Monaco—and certainly would not do so towards the great and powerful republic of the United States, for which he had ever entertained the warmest feelings of respect and friendship.

I presume you may expect, ere long, to hear from Lord Clarendon, through a note addressed to Mr. Crampton, according to what he says is diplomatic usage.

We afterwards had some conversation about the invasion of Ireland, which I have never treated seriously. In regard to the Russian privateer alleged to be fitting out at the port of New York, I told him that since our last conversation I had seen two gentlemen who had just arrived from New York, who assured me they would be likely to know or have heard of it were any such steamer building; and they treated the report to that effect on this side of the Atlantic as idle and unfounded. In reply, he informed me that the fact was substantiated, and the steamer described in a particular manner, which he

detailed, by three depositions, which had been forwarded by the British consul at New York to Mr. Crampton, who had brought the subject to your notice, and you had promised to inquire into it.

* * * * *

Yours, very respectfully,
JAMES BUCHANAN.

Hon. WILLIAM L. MARCY,
Secretary of State.

Mr. Buchanan to Mr. Marcy.

[Extract.]

[No. 101.]

LEGATION OF THE UNITED STATES,
London, November 9, 1855.

SIR: I had an interview with Lord Clarendon on yesterday, by appointment, and shall now report to you, as nearly as I can recollect it, our conversation. After the usual salutations, I said to him: "Your lordship, when we last parted, asked me to help you to keep the peace between the two countries, which I cordially promised to do; and I have come here to-day to make a suggestion to you with this intent.

"You have now learned the prompt and energetic action of the government of the United States in causing the seizure and examination of the vessel at New York which you had learned was intended for a Russian privateer. Upon this examination she has turned out to be the barque Maury, built for the China trade, and bound to Shanghai. The ten iron cannon in the hold and four on deck, together with the other arms on board, were designed to furnish arms to the merchantmen in the Chinese seas, to enable them to defend themselves against the pirates, so numerous in that quarter. The time of her sailing had been announced for three weeks in five daily journals, and she was to take out four Christian missionaries. So satisfactory did the examination prove to be, that Mr. Barclay, the British consul, had himself assented to her discharge.

"Your lordship stated to me at our last meeting that the reason why the British fleet had been sent to the vicinity of the United States was the information you had received that a Russian privateer had been built in New York, and was about to leave that port to prey upon your commerce with Australia. You have now received the clearest evidence, not only that this was all a mistake, as I predicted at the time it would prove to be, but also that the government of the United States has acted with energy and good faith in promptly causing the vessel to be seized and examined. Now, my lord, the cause having proved to be without foundation, the effect ought to cease, and I earnestly suggest to you the propriety of issuing an order to withdraw the fleet."

"The *Times* accompanied the annunciation that this fleet had been

sent, with the most insulting and offensive exposition of the reasons for this act, and several journals friendly to the present government followed in the same spirit. When we take into view the existing difference between the two governments about enlistments, and the still more dangerous questions behind, concerning Central America—all of which are well known to the people of the United States—what will be the inference naturally drawn by them when the news shall first burst upon them? Will it not be that this fleet has reference to these questions, and is intended as a menace? I need not say what will be the effect on my countrymen. They well know that no reason ever existed, in point of fact, for apprehension on account of Russian privateers, and still less, if that be possible, for an expedition to Ireland; and they will not attribute the sending of the fleet to these causes. The President, in his message to Congress early in December, will doubtless present to that body the present unsatisfactory condition of the Central American questions; and it will require the cool and clear heads of the public men of both countries to prevent serious consequences from these questions. Now, it so happens that the news of the sending of the British fleet will arrive in the United States but a short time before the date of the message, and will almost necessarily be connected in public opinion with these dangerous questions, thus rendering them more complicated. If you will at the present moment, and before we can hear from the United States, voluntarily withdraw your fleet, upon the principle that the danger from Russian privateers, of which you had been informed, did not, in point of fact, exist, and at the same time do justice to the government of the United States for having so faithfully preserved its neutrality; this would be to pour oil upon the troubled waters, and could not fail to produce the best results. You might address a note either to Mr. Crampton or myself, stating that the fleet had been withdrawn; and I am persuaded that this act of justice would have a most happy effect."

His lordship, in reply, said, in substance, (for I will not undertake to repeat his very words,) that he thanked me for my suggestion, and would take it into serious consideration; but, of course, he could do nothing without consulting the cabinet. Of this, however, he could assure me most positively, as he had done at our former interview, that nothing could be further from their intention than any, even the most remote, idea of a menace in sending out the fleet. Immediately after our conversation on Thursday last, he had sent to the Admiralty and requested that orders might be issued that the vessels sent out should not go near the coasts of the United States. Sir Charles Wood and Admiral Berkeley had both informed him that it was never their intention that they should approach our coasts, and he could assure me that none of these vessels would ever go "poking" about our ports. Besides, he said, Sir Charles Wood had informed him that but three vessels had been sent out—one to Bermuda, and the other two to Jamaica. [I observed this was a mistake, but I would not interrupt him.] He replied, this was the information he had received from Sir Charles.

Lord Clarendon to Mr. Crampton.

[No. 272.]

FOREIGN OFFICE,
November 16, 1855.

SIR: In my despatch to you, No. 250, of the 2d instant, I enclosed the copy of a despatch from Mr. Marcy, which had been read to me, and placed in my hands by Mr. Buchanan.

Before I proceed to offer any remarks upon this despatch, it will be proper to state that when it was read to me by Mr. Buchanan I had no cognizance of Mr. Marcy's despatch of the 15th of July to which it alludes, and of which a copy was also transmitted to you; and upon my observing this to Mr. Buchanan, he said he had not thought it necessary to communicate it to me, as, before it had reached him, he had received my note of the 16th of July, which he thought would finally settle the question that had arisen between the two governments.

Her Majesty's government shared the opinion of Mr. Buchanan. They did not doubt that the frank expression of their regret for any violation of the United States law, which, contrary to their instructions, might have taken place, and of their determination to remove all cause for further complaint by putting an end to all proceedings for enlistment, would have satisfactorily and honorably terminated a difference between two governments whose duty it was to maintain the friendly relations which have hitherto, and to their great reciprocal advantage, happily subsisted between Great Britain and the United States. But as this expectation has been disappointed, and as a spirit altogether at variance with it has been manifested by the government of the United States, her Majesty's government, while they fully appreciate the friendly motives which actuated Mr. Buchanan, are now disposed to regret that he withheld the despatch of Mr. Marcy, as it would have called their attention to proceedings against which the United States government thought itself called upon to remonstrate, and which would at once have been inquired into, as her Majesty's government, in a matter which concerned the law of the United States, were scrupulously desirous that no just cause for complaint should arise.

This despatch, however, of which Mr. Buchanan has given me a copy, together with Mr. Marcy's despatch of the 13th of October, have now been considered with all the attention that is due to them; and, in conveying to you the opinion of her Majesty's government, I shall endeavor to exclude from discussion the subjects which are foreign to the question immediately at issue, and which might lead to irritation; and this course will be the more proper as her Majesty's government observe, with satisfaction, that Mr. Marcy's note of the 13th October is not framed in the tone of hostility which characterized his note of the 5th of September to you.

It appears that two distinct charges are made against the officers and agents of her Majesty's government:

First. That they have within the United States territory infringed the United States law; and, secondly, that they have violated the

sovereign territorial rights of the United States by being engaged in "recruiting" for the British army within the United States territory.

Now, with respect to both these charges, I have to observe that the information possessed by her Majesty's government is imperfect, and that none of a definite character has been supplied by the despatches of Mr. Marcy, inasmuch as no individual British officer or agent is named, and no particular fact or time or place is stated; and it is therefore impossible at present to know either who is accused by Mr. Marcy, or what is the charge he makes, or what is the evidence on which he intends to rely.

Her Majesty's government have no means of knowing who are the persons really indicated by the general words "officers and agents of her Majesty's government;" whether such persons as those who [have] been under trial are the only persons meant to be charged, or, if not, who else is to be included, or what evidence against them is relied upon by the United States government.

It is true that you and her Majesty's consuls are personally charged in Mr. Marcy's note to you of the 5th of September; but neither you nor they are alluded to in Mr. Marcy's despatch of October 13 to Mr. Buchanan, which might not unreasonably have been expected, if it really be the intention of the United States government to charge you or them with being "malefactors sheltered from conviction," (to use the official language of the United States Attorney General.)

They must, therefore, request the United States government to make and establish more distinct charges, with proper specification, against particular individuals by name; and that government will, I am confident, not deny the justice and the necessity of giving each person implicated the opportunity of knowing what is alleged against himself, and of dealing with the evidence by which the charge may be supported.

I shall accordingly abstain from offering the remarks which a perusal of the evidence at the recent trials and the character and conduct of the witnesses have naturally suggested; nor will I observe upon the temper and spirit in which the officers of the United States government have throughout proceeded, and which displayed their desire rather to influence the public mind against her Majesty's government, than simply to prove the facts necessary to convict the accused parties; this tone and spirit being the more remarkable when it is remembered that the proceedings complained of had been for some time definitively abandoned, out of deference to the United States government, and that the question to be determined was the character and complexion of acts done many months previously, under a state of things no longer existing.

With reference to the second charge made by Mr. Marcy—namely, that of "violating the sovereign territorial rights of the United States, by recruiting for the British army within their territories"—I have to observe, that apart from any municipal legislation in the United States on the subject of foreign enlistment, or in the entire absence of any such legislation, Great Britain, as a belligerent nation, would commit no violation of the "sovereign territorial rights of the United States" simply by enlisting as soldiers, *within British territory*, per-

sons who might leave the United States territory in order so to enlist. The violation alleged is the recruiting *within the United States*; but to assume that there was, in fact, any such "recruiting," (that is, hiring or retaining by British officers,) is to beg the question.

It appears to her Majesty's government that, provided only no actual "recruiting" (that is, enlisting or hiring) takes place within the United States, British officers who, within the United States territories, might point out the routes which intending recruits should follow, or explain to them the terms upon which they would be accepted, or publish and proclaim such terms, or even defray their travelling expenses, or do similar acts, could not be justly charged with violating such sovereign territorial rights. It has been legally decided in the United States that the payment of the passage from that country of a man who desires to enlist in a foreign port, does not come within the neutrality law of the United States, and that a person may go abroad, provided the enlistment be in a foreign place, not having accepted and exercised a commission.

It would, indeed, be a violation of territorial rights to enlist, and organize, and train men as British soldiers within the United States—and whether or not this has been done by British authority is the question involved in the first of Mr. Marcy's charges—but it is decidedly no violation of such rights to persuade or to assist men merely to leave the United States territory and to go into British territory, in order, when they arrive there, either to be voluntarily enlisted in British service or *not, at their own discretion*. There can be no question that the men who went to Halifax were free, and not compelled to be soldiers on their arrival. Upwards of one hundred Irishmen in one body, for instance, if her Majesty's government are rightly informed, refused to enlist on arriving there, and said they came in order to work on a railway. They were, therefore, not enlisted, hired, or retained as soldiers in the United States: no attempt was made to enforce against them any such contract or engagement.

Mr. Marcy cites no authority for the position he has assumed in relation to this particular doctrine of the effect of foreign enlistment on sovereign territorial rights; but the practice of nations has been very generally adverse to the doctrine, as proved by the numerous instances in which foreign troops have been, and still are, raised and employed.

It cannot, therefore, be said that Mr. Marcy's doctrine is in accordance with the general practice of nations; and high authority might be quoted directly adverse to any such doctrine as applicable to free countries—"ubi civitas non carcer est." But even admitting the alleged doctrine as to the bearing of the principle of territorial sovereignty, its application must obviously be subject to many limitations in practice.

Her Majesty had (for instance) internationally an unquestionable right to recall to her standard displayed upon her own territory those of her own subjects capable of bearing arms who might be transiently or temporarily resident in a foreign country, and her Majesty would not thereby incur any risk of violating the "territorial sovereignty" of such country. Again: in the case of political refugees driven

from their own country, an essentially migratory class, owing a merely local and qualified allegiance to the United States, is it to be contended that to induce such persons by any fair means short of "hiring" or enlisting them to leave the United States in order to enrol themselves on British territory as volunteers in a war in which many of them feel the strongest and most natural desire to engage, is to violate the territorial sovereignty of the United States?

It is, of course, competent to any nation to enact a municipal law, such as actually exists in many countries, forbidding its subjects to leave its territory, but in such cases "*civitas carcer est*;" and it may be the duty of other countries to abstain from actively assisting the captives to escape from the national prison in order to serve another master; but the government of the United States has enacted no such law—it justly boasts of its complete freedom in this respect, "*civitas non carcer est*;" all residents therein, whether foreigners or citizens, are perfectly free to leave its territory without the permission of the government, at their own absolute discretion, and to enter the service of any other state when once within its frontier. To invite them or persuade them to do what is thus lawful can constitute no violation of the territorial rights, which the sovereign power has never claimed or exercised.

It is moreover to be observed that in this case no United States citizens, as far as her Majesty's government are aware, were engaged; both those actually enlisted within the British North American provinces and those expected were, to the best of our belief, exclusively foreigners, and not citizens of the United States.

Without entering further into the discussion of this peculiar doctrine, I will only remark that, at all events, it was not proclaimed or insisted upon by the United States, either at the commencement of the war, or when the desire of her Majesty's government to raise a foreign legion was first published, or when a recruiting station was first opened at Halifax.

The United States, therefore, although always and most properly insisting on their right and intention to punish violations of their municipal law, took no step to proclaim or vindicate the particular doctrine now set forth until a very late period of the discussion, and after the time for giving effect to it had gone by. The charge of "violation of sovereign territorial rights" cannot, therefore, in the opinion of her Majesty's government, be fairly urged as a separate and different charge from that of violation of the municipal law of the United States. But the municipal law was certainly not violated by the orders, nor, as far as they believe, by the officers of her Majesty's government; and her Majesty's government and her Majesty's minister at Washington gave reiterated orders to all concerned carefully to abstain from such violation; and if the British government did not purposely cause the United States law to be violated, then the territorial rights of the United States, whatever they may be, were not, as has been said, intentionally violated by Great Britain "as a nation," even if it should be shown that the municipal law of the Union was infringed.

Before I conclude this despatch, it may be useful to place on record

certain facts connected with the question of recruiting in North America, the correctness of which will, I doubt not, be admitted by Mr. Marcy ; and I will observe—

First : That the United States government were from the first perfectly well aware that her Majesty's government were in want of recruits, and were desirous of raising a foreign legion.

Secondly : That preparations were making to receive recruits in a British North American colony for such a legion.

Thirdly : That her Majesty's government expected to receive recruits there for such a legion from the United States, although, whilst so doing, they were anxious not to violate the United States law.

Fourthly : That many British subjects and foreigners in the United States were *bona fide* "volunteers," desirous, from various but natural and powerful motives, to enlist. Numerous offers to raise men within the United States were made, but were consistently and honorably refused by her Majesty's ministers and consuls, in order to avoid violating the United States law.

Fifthly : That Mr. Marcy was in confidential communication with you on the subject for months, without ever, that I am aware of, warning you against attempting anything of the kind, or stating that the United States would resist or resent it, apart from any question of municipal law ; thus, in effect, acquiescing, and only insisting that the United States law should be respected.

Sixthly : That as soon as it became apparent that the United States government was adverse to the scheme, and that it might lead to violations of the United States law, the whole project was abandoned out of deference to the United States ; but this conclusive proof of the good faith and good will of her Majesty's government has not been noticed or appreciated by the government of the United States.

Sevently : That the whole question in dispute now turns, *not* on what is doing, or shall or may be done, by her Majesty's government, but on what *was* done many months ago, under a system which is not continuing nor about to be revived, and which has been voluntarily and definitively abandoned, in order to satisfy the United States, and to prevent the occurrence of any just ground for complaint.

The foregoing facts and considerations, which demonstrate that no offence to the United States was offered or contemplated by her Majesty's government, may, perhaps, have weight with Mr. Marcy, if the matter at issue is to be settled in a manner becoming the governments of Great Britain and the United States, and with a deep sense of the responsibility which weighs on them to maintain uninterrupted and unshaken the relations of friendship which now exist between the two countries ; and her Majesty's government, fully reciprocating the feelings of the United States government expressed in Mr. Marcy's despatch, with regard to the many ties and sympathies which connect together the people of the two countries, do not permit themselves to doubt that such further discussions as may take place on this question will be conducted in a spirit of conciliation.

It only remains for me to state that no enlistment in the British service is valid without attestation ; and that, according to British laws, a recruit cannot be attested in a foreign country, nor even in

the British colonies, without a specially delegated authority for that purpose. No binding contract could therefore be made with any man within the United States. Promises might be so made, but any money given to men to enable them to repair to places beyond the United States territory for "the purpose of being enlisted would be advanced at a risk. Nevertheless, if it can be shown that there are persons now in the foreign legion who have been enlisted or hired in violation of the United States law as well as of the British law, her Majesty's government will be prepared to offer them their discharge, and to give them a free passage back to the United States if they choose to return thither.'

You are instructed to read and give a copy of this despatch to Mr. Marcy.

I am, &c.,

CLARENDON.

JOHN F. CRAMPTON, Esq., &c., &c., &c.

Mr. Marcy to Mr. Buchanan.

[No. 130.]

DEPARTMENT OF STATE,
Washington, December 28, 1855.

SIR: I have received from Mr. Crampton, her Britannic Majesty's envoy extraordinary and minister plenipotentiary to this government, a despatch addressed to him by the Earl of Clarendon, her Majesty's principal secretary of state for foreign affairs, in reply to my despatch to you of the 13th of October.

This document has been carefully considered by the President, and I am directed to present to you his views thereon, for the purpose of having them laid before her Majesty's government.

It is perceived with deep regret that there exists a very wide difference of opinion between this government and that of Great Britain in regard to the principle of law involved in the pending discussion, and a still wider difference, if possible, as to the material facts of the case.

It is due alike to the serious importance of the question under consideration, and to the sincere respect entertained for the elevated character and position of Lord Clarendon, that opinions and views so much in conflict with his should be not merely announced, but sustained.

To do this I shall be obliged to occupy much space, and notice several delicate topics; but in performing this unavoidable duty, I shall refrain, as far as practicable, from any allusion to subjects which may lead to irritation; and I hope to remove the impression from Lord Clarendon's mind that my previous despatches have manifested a "tone of hostility," and have been framed in a spirit incompatible with the duty, which I feel as sensibly as he can, of maintaining friendly relations between the two countries.

I am quite certain that Lord Clarendon is not aware of the serious importance which the United States attach to the question under dis-

cussion ; otherwise, he would not have so harshly characterized the conduct of the United States officers on whom the duty to suppress recruiting for the British service was devolved ; nor would he have so freely arraigned the motives of this government for requiring some satisfaction for what it regards as a great national wrong.

The variant views of the British government in relation to recruiting for its armies within the United States render the precise position it intends to maintain somewhat uncertain.

To present the different aspects in which the two governments view the case, and to show the reasons for dissenting from some of the statements and the main conclusions contained in Lord Clarendon's despatch of the 16th of November, a recurrence to the prominent points appears to be indispensable.

The claim put forth in that despatch, of the right of a foreign belligerent power to resort to the territories of a neutral state to recruit its armies, and for that purpose to employ such means as he justifies, raises one of the gravest international questions which can come under consideration. If that right be conceded, then any foreign power can justifiably resort to measures for recruiting its armies within the jurisdiction of this country almost coextensive with those which can be employed by this government.

Before adverting to the conduct of the officers and agents of her Majesty's government in recruiting within the territories of the United States, it will be necessary, not only to define our own rights, but to ascertain the precise limits of British pretensions.

After the debatable ground shall be clearly ascertained, the range of discussion will, it is hoped, be reduced to narrower limits, and the probability of an amicable adjustment of the present difficulties increased.

When the Parliament of Great Britain authorized foreign enlistments, there was no apprehension here that the United States would be resorted to for that purpose. This government had what was regarded as the assurance of her Majesty's government that enlistments in this country would not be attempted by British authority, unless notice was given and its consent obtained.

While the bill for foreign enlistments was under consideration in Parliament, her Majesty's ministers were warned against resorting to a measure which would be dangerous to peaceful relations with other powers.

When the Duke of Newcastle, her Majesty's secretary of war, and a member of the cabinet, introduced that bill into the House of Lords, he was asked to state from what country the foreign legion was to be obtained, and he replied that the question could not be answered until communications were had with foreign governments. No such communication has ever been made to this government ; but, on the contrary, much was done here, after the plan of recruitment was in full operation, to allay the suspicion that the British government was in anywise connected with it.

After her Majesty's ministers came to the determination to raise recruits within the United States, it is much to be regretted that their purpose, together with the instructions to their agents, was not made

known to this government. There is some vague language used in the last despatch of Lord Clarendon, which seems to imply that this had been done; but it is not positively asserted, nor could it be. The first intimation which reached this government that recruiting within the United States had the sanction of British authority was derived from the proceedings which had taken place in executing the plan of enlistment. The first step taken by the British government, or any of its officers, in communicating with that of the United States on the subject, was one which implied an assurance that the British government not only had no connexion with, but actually discountenanced, the scheme of recruiting for the British army, although it subsequently appeared that the proceedings were supervised by British officers, and conducted by their agents. This assurance was derived from a letter dated the 22d of March, addressed by Mr. Crampton to the British consul at New York, and about that time read to me. I shall have occasion hereafter to bring that letter under particular consideration.

Without any notification from the British government of such an intention, it would have been extremely illiberal to indulge a suspicion that her Majesty's ministers or officers had been so unmindful of what was due to courtesy as to authorize, or even countenance, the unfriendly procedure of sending agents into the United States to raise recruits for the British army. The offenders against the laws of the United States were, therefore, treated as individuals unconnected with the British government, and unsustained by its authority or means; but the judicial proceedings against them soon disclosed facts which established a complicity of her Majesty's officers in the British provinces in this scheme of recruiting within the United States.

The next step in the progress of events was the delivery in May, at the Department of State, of a copy of a despatch from Lord Clarendon to Mr. Crampton, dated the 12th of April last, relating to that subject. This paper demands special attention. It conveyed the first distinct intimation that her Majesty's ministers had given instructions for enlistments in the United States, together with the fact that to the British minister, Mr. Crampton, had been assigned some duty in that service. Lord Clarendon says to Mr. Crampton in that despatch: "I entirely approve of your proceedings, as reported in your despatch No. 57, of the 12th ult., with respect to the proposed enlistment, in the Queen's service, of foreigners and British subjects in the United States." Thus it was brought to light that the British cabinet had proposed enlistments in the United States, and had employed her Majesty's envoy extraordinary and minister plenipotentiary accredited to this government to aid in the undertaking. When this despatch was received at this department, Mr. Crampton was in the British provinces. It had direct reference to the enlistment, for the Queen's service, of foreigners and British subjects in the United States. The object to be accomplished was against law; and it is difficult to conceive what one step Mr. Crampton could have taken in furtherance of it, without putting at defiance an act of Congress which prohibits, in explicit terms and under heavy penalties, such a proceeding.

Being satisfied that the government of Great Britain reciprocated our friendly sentiments, and that it would not deliberately and designedly authorize proceedings within the jurisdiction of the United States in contravention of their laws, this government was disposed to believe that there had been some strange misapprehension on the subject by her Majesty's cabinet, and that the inadvertent misstep would be retraced as soon as it was perceived, with such explanations to this government as the circumstances of the case seemed to require.

The closing part of the despatch alluded to was interpreted as indicating a consciousness that the British ministers, in authorizing enlistments in the United States, had acted at first in utter ignorance of the laws of this country; for Lord Clarendon says: "The law of the United States with respect to enlistments, however conducted, is not only very just but very stringent, according to the report which is enclosed in your [Mr. Crampton's] despatch, and her Majesty's government would on no account run any risk of infringing this law of the United States." But, as that risk would be inevitably run if the design should be pursued, it was expected that the original scheme of recruiting within the United States would be promptly and wholly abandoned.

After the lapse of some time, this government discovered that it had looked with a mistaken confidence to a result so much desired. Throughout the months of April, May, and June, the business of recruitment proceeded upon a wider field, and with increased vigor; it was extended to regions which it had not hitherto reached; the efforts of our magistrates and tribunals scarcely checked, but could not arrest it; and proofs were daily brought out which show that the recruiting business derived vitality and energy from the countenance and means afforded by her Majesty's officers resident in the United States and in the adjoining British provinces.

To arrest the evil, an appeal to the British government, unpleasant as such a step was, became necessary, and in the early part of June you were directed by the President to present the case to the notice of the Earl of Clarendon. In your note to Lord Clarendon of the 6th of July, the case is clearly and ably laid before his lordship, and he is assured that this government had reason to believe, and did believe, that British officers were engaged in carrying out a scheme of recruiting for the British army within the United States in contravention of their laws and sovereign rights; and you were instructed to ascertain from the British government how far these officers had acted, with or without its approbation, and what measures, if any, had been taken to restrain their unjustifiable conduct. Lord Clarendon was assured that the President would be gratified to learn that her Majesty's government had not authorized the proceedings complained of; that it had condemned the conduct of its officials engaged therein; had visited them with its marked displeasure, and taken measures to arrest the proceedings complained of.

The reply to this note deserves particular notice on several accounts, but especially for the difference between it and the despatch of the 16th of November, now under consideration.

In the note of the 16th of July Lord Clarendon seems to admit that the restraining effect of the law of the United States in regard to recruiting is such as this government asserts it to be; but, by his exposition of that law in his despatch of the 16th of November, it is bereft of the very stringent character he had before ascribed to it, and it is now so construed by him as to afford justification for such acts as, in his former note, he conceded to be illegal.

In the note to you of July, the British government only claimed the right to make generally known to British subjects and foreigners in the United States, who wished to enter her Majesty's service and take part in the war, its desire to accept these volunteers, and to receive such as should present themselves at an appointed place in one of the British provinces.

That Lord Clarendon intended, in his note of the 16th July, to exclude all pretension to a right to publish handbills offering inducements, and to send agents into the United States for recruiting purposes, is shown by the following passage: "It can scarcely be matter of surprise that, when it became known that her Majesty's government was prepared to accept these voluntary offers, many persons, in various quarters, should give themselves out as agents employed by the British government, in the hope of earning reward by promoting, though on their own responsibility, an object which they were aware was favorably looked upon by the British government. Her Majesty's government do not deny that the acts and advertisements of these self-constituted and unauthorized agents were, in many instances, undoubtedly violations of the laws of the United States; but such persons had no authority whatever for their proceedings from any British agents, by all of whom they were promptly and unequivocally disavowed."

These positions taken by the Earl of Clarendon brought the matter to a definite point. This government took issue upon his allegation that the persons engaged in recruiting in the United States were self-constituted, unauthorized agents, whose acts had been disavowed; and it maintained, on the contrary, that the persons performing them were authorized agents, and had embarked in that service in consequence of inducements, stronger than the mere hope of uncertain reward, held out to them by British officers; that they were promised commissions in the British army, and some of them were actually received and treated as fellow-officers, and as such were paid for their services, received instructions from her Majesty's servants for the guidance of their conduct while within the United States, and were furnished in the same way with abundant funds for carrying on their recruiting operations in this country. The persons engaged in the United States in recruiting were, in fact, the agents and instruments of eminent British functionaries resident here and in the neighboring British provinces. The numerous judicial investigations and trials have brought out a mass of testimony too strong to be resisted, implicating these functionaries, and sustaining the foregoing allegations.

When this state of the case was presented to Lord Clarendon, with the designation by name of some of the higher British officers, with

the assurance by the President that the information he possessed did not allow him to doubt their participation in the offence against the laws and sovereign rights of the United States, his lordship did not then call for the evidence, as he has since done, but disposed of it by the general declaration "that even the extraordinary measures which have been adopted in various parts of the Union to obtain evidence against her Majesty's servants, or their agents, by practices sometimes resorted to under despotic institutions, but which are disdained by all free and enlightened governments, will fail to establish any well-founded charge against her Majesty's servants."

It is presumed that his lordship's misapprehension as to the character of the evidence, and the means by which it was obtained, has been since corrected; because in his last note he not only calls for the names of the British officers implicated, (though some of them had been before given,) and the specific charges against them, but for a particular statement of the evidence by which these charges are sustained, professing to have very imperfect information in regard to the matters complained of, although full four months had passed since his attention was first called to them by this government.

The exposition he has given to the statute of the United States against recruiting, and the restrictions he has placed upon our sovereign rights, show that his views on that subject have been greatly modified since his first despatch was written.

As that law is now construed by him, scarcely any evidence, however obtained, or whatever be its character, will be sufficient to implicate any one in the offence of recruiting within the United States.

If the views of Lord Clarendon as to that law and the sovereign rights of the United States can be maintained, the territories of this country are open, almost without restriction, to the recruiting operations of all nations, and for that purpose any foreign power may sustain a vigorous competition with this government upon its own soil.

This government does not contest Lord Clarendon's two propositions in respect to the sovereign rights of the United States—first, that, in the absence of municipal law, Great Britain may enlist, hire, or engage, as soldiers, within the British territory, persons who have left the United States for that purpose; (this proposition is, however, to be understood as not applying to persons who have been enticed away from this country by tempting offers of reward, such as commissions in the British army, high wages, liberal bounties, pensions, and portions of the royal domain, urged on them while within the United States, by the officers and agents of her Majesty's government;) and secondly, no foreign power has a right to "enlist and organize and train men as British soldiers within the United States." The right to do this Lord Clarendon does not claim for his government; and whether the British officers have done so or not, is, as he appears to understand the case, the only question at issue, so far as international rights are involved, between the two countries.

In his view of the question as to the rights of territory, irrespective of municipal law, Lord Clarendon is understood to maintain that her Majesty's government may authorize agents to do anything within the United States, short of enlisting, and organizing, and training

men as soldiers for the British army, with perfect respect to the sovereign rights of this country.

This proposition is exactly the reverse of that maintained by this government, which holds that no foreign power whatever has the right to do either of the specified acts without its consent. No foreign power can, by its agents or officers, lawfully enter the territory of another to enlist soldiers for its service, or organize or train them therein, or even entice persons away in order to be enlisted, without express permission.

This, as a rule of international law, was considered so well settled that it was not deemed necessary to invoke the authority of publicists to support it. I am not aware that any modern writer on international law has questioned its soundness. As this important principle is controverted by Lord Clarendon, and as its maintenance is fatal to his defence of British recruiting here, I propose to establish it by a reference to a few elementary writers of eminence upon the law of nations :

“ Since a right of raising soldiers is a right of majesty which cannot be violated by a foreign nation, it is not permitted to raise soldiers on the territory of another without the consent of its sovereign.”—*Wolffius*.

Vattel says, that “ the man who undertakes to enlist soldiers in a foreign country without the sovereign’s permission, and, in general, whoever entices away the subjects of another State, violates one of the most sacred rights of the prince and the nation.” He designates the crime by harsher names than I choose to use, which, as he says, “ is punished with the utmost severity in every well-regulated state.” Vattel further observes, that “ it is not presumed that their sovereign has ordered them [foreign recruiters] to commit a crime ; and supposing, even, that they had received such an order, they ought not to have obeyed it ; their sovereign having no right to command what is contrary to the law of nature.”

Hautefeuille, a modern French author of much repute, regards permission (and acquiescence implies permission) by a neutral power to one belligerent, though extended to both, to raise recruits in its territories, unless it was allowed in peace, to be an act of bad faith, which compromises its neutrality.

There can be no well-founded distinction, in the rule of international law, between raising soldiers for a belligerent’s army and sailors for its navy within a neutral country. Hautefeuille says, “ the neutral sovereign is under obligation to prohibit and prevent all levying of sailors upon its territory for the service of the belligerents.” Again he says, “ the neutral must prohibit, in an absolute manner, the levying of sailors upon its territory to complete a ship’s company reduced by combat or any other cause.”

“ The prohibitions to engage sailors on the territory of a pacific prince must extend to foreigners who are found in the ports of his jurisdiction, and even to those who belong to the belligerent nation owning the vessel that wishes to complete its crew, or ship’s company.”

Reference to other writers might be made to sustain the position

contended for by this government, and to overthrow that advanced by Lord Clarendon, but the authority of those presented is deemed sufficient for that purpose.

This view of the law on the subject was presented to Parliament when the foreign-enlistment bill was under debate. On that occasion Lord Stanley said that the object proposed by it was "to resort to a practice which, for the last hundred years, the opinions of European statesmen had not hesitated to condemn."

This is the doctrine on the subject of recruiting soldiers and sailors by belligerents on neutral soil, which this government maintains, and insists upon applying to the present case.

There is another view of territorial rights which Lord Clarendon has not distinctly brought out, but which has a direct bearing upon the question under consideration. The extent of a nation's sovereign right depends, in some measure, upon its municipal laws. Other powers are bound, not only to abstain from violating such laws, but to respect the policy of them. The British officers who set in operation the scheme for recruiting in this country, which resulted in numerous acts against its law, being beyond its jurisdiction, did not, by such a proceeding, expose themselves to the penalties denounced by that law; but they violated its policy, and their acts, if done in obedience to the orders of their government, or in carrying out its purposes, involved that government in responsibility for their conduct. It is the sovereign right of every independent state, that all foreign powers shall abstain from authorizing or instigating their officers or agents to do that, even within their own dominions, which would, as a natural or very probable consequence, lead to the contravention of the municipal laws of such state. Some of the proceedings by British officers and agents, in regard to recruiting within the United States, though conducted beyond the limits thereof, were considered by this government an infringement of their sovereign rights, and constituted one ground of remonstrance to her Majesty's government.

But Lord Clarendon's exposition of the municipal law of the United States, in respect to recruiting therein, has created much more surprise than the restrictions he has laid on the sovereign rights of this country.

If I do not misconceive his meaning, Lord Clarendon's interpretation nearly annuls the clause in the act of Congress which prohibits enlisting within the United States for foreign service, and thus leaves to British officers and agents full liberty to do almost anything for that purpose.

He says "that no enlistment in the British service is valid without attestation, and that, according to British laws, a recruit cannot be attested in a foreign country, nor even in the British colonies, without a specially-delegated authority for that purpose."

The other provisions of the law, which forbid hiring or retaining persons within the United States to go beyond the limits thereof, for the purpose of enlisting in foreign service, are reduced to the same imbecility by a similar course of reasoning. Lord Clarendon says:

"No binding contract could, therefore, be made with any man within the United States; promises might be so made, but any money given to men to enable them to repair to places beyond the United States territory for the purpose of being enlisted, would be advanced at a risk."

In order to prevent misconception as to Lord Clarendon's views on this subject, and to show that the inferences here deduced from them are correct, I add another extract from his despatch of the 16th of November:

"There can be no question that the men who went to Halifax were free, and not compelled to be soldiers on their arrival. Upwards of one hundred Irishmen in one body, for instance, if her Majesty's government are rightly informed, refused to enlist on arriving there, and said they came in order to work on a railway. They were therefore not enlisted, hired, or retained, as soldiers in the United States: no attempt was made to enforce against them any such contract or engagement."

Lord Clarendon, it is true, uses language in other parts of that despatch which seems to admit that enlisting into foreign military service within the United States, or hiring or retaining persons to leave the United States to enlist into such service, would be a violation of the United States neutrality law; but this admission amounts to nothing, when taken in connexion with his definition of the terms enlisting, hiring, or retaining. In his view, as I understand it, each act must be the result of a valid contract. If the persons are not bound, when they have left the United States, to perfect their enlistment, then there has been no violation of the United States law. Such a contract made in the United States, being expressly prohibited by law, would, of course, be void. I think this conclusion is fairly deduced from Lord Clarendon's language; or rather is his own conclusion, stated by him in a different manner.

This government cannot concur in these views. They deprive the law of the United States of all stringency, and render it a dead letter. The earlier opinion of Lord Clarendon in regard to that law is the one which this government strenuously maintains.

In his despatch of the 12th of April, to which I have already referred, he admits "that the law of the United States with respect to enlistment, however conducted, is not only very just, but very stringent;" but, as I understand his latter opinion, the law imposed very little restraint upon the British officers and agents who embarked in the scheme of recruiting in this country; it left them with all the liberty they had occasion to use for their purpose; they could penetrate every part of the country; open rendezvous in any city; publish handbills, ornamented with the emblem of England's royalty, presenting every inducement for enlisting which a United States officer engaged in recruiting troops for his own government could offer; and yet, in doing all these things, they would comply with the stringent instructions—so often repeated to them, and now so much relied on for their justification—not to violate the United States law of neutrality.

Under the construction given by her Majesty's government to that

law, the injunction not to violate it could have had very little significance, and is not admitted by this government as an available excuse for what was done by her Majesty's officers and agents.

After the most deliberate and respectful consideration of Lord Clarendon's views, in his despatch of the 16th of November, as to the sovereign rights of the United States, the effect of their neutrality law, and the conduct of the British officers and agents in carrying out the scheme of recruiting, this government is constrained to differ most widely from them all.

It cannot but regard the original design, which had the sanction of the British cabinet, as a dangerous measure, which should not have been adventured on without the consent of this government. The scheme for carrying out that design, which, it is presumed, was devised in the United States or the British provinces, was framed in an utter disregard of the act of Congress, and almost every step in the progress of executing it was attended by the transgression of that law.

The reasons offered by Lord Clarendon for not having acted, on the complaint of this government, against the British officers who were engaged in recruiting within the United States, and the precedent condition to be performed before that complaint will be attended to, deserve particular consideration. Lord Clarendon says "they (her Majesty's ministers) must, therefore, request the United States government to make and establish more distinct charges, with proper specifications against particular individuals by name; and that government will, I am confident, not deny the justice and the necessity of giving each person implicated the opportunity of knowing what is alleged against himself, and of dealing with the evidence by which the charge may be supported."

In your note to Lord Clarendon of the 6th of July, the charges, as well as the designation of persons, were less distinctly presented than in the despatches subsequently laid before her Majesty's government; yet in Lord Clarendon's reply to that note he did not object to the charges for being indefinite, or to the designation of the persons implicated for uncertainty. He did not deny that the United States law had been violated, but insisted that it had been done by self-constituted and unauthorized persons, for whose acts British officers were not responsible.

In my despatch of the 5th of September, addressed to Mr. Crampton, the charges were repeated with more distinctness, and Mr. Crampton himself and Sir Gaspard le Marchant were both named.

Lord Clarendon appears to have understood that her Majesty's consuls in some of the cities of the Union were included in the charge against British officers resident within the United States. Nothing was said in Lord Clarendon's reply to my despatch of the 5th September, concerning his imperfect information on the subject, or his uncertainty as to the persons complained of; nor did he then call for the evidence by which the participation of the British officials in the infraction of the law of the United States was to be established; but he set aside the whole of the evidence by the sweeping allegation, that the practices resorted to for obtaining it rendered it incompetent "to establish any well-founded charge against her Majesty's servants."

The ground taken in July—that the persons engaged in recruiting, who had violated the law of the United States, were self-constituted and unauthorized agents—is abandoned in his despatch of November. In the latter it is not denied that these persons have acted under the authority of the British government; but her Majesty's ministers now propose to give their attention to the demand of this government for redress, if it will make and establish more distinct charges, with proper specifications, against particular individuals by name. Quite as much, and, indeed, more than is usual, has been done in this case, in specifying charges and indicating the persons implicated. The despatches from this government, in the possession of the British ministers, made such disclosures as to the infringement of the law and rights of the United States, and as to the British officers and agents concerned therein, as called for a full investigation of the subject by her Majesty's government. Such an investigation on its part was, in the opinion of the United States, due to the friendly relations of the two countries, and would have been in strict conformity to established usage; but that government has remained apparently inactive, and is, it seems, disposed so to remain, until the American Secretary of State shall name the individual persons accused, describe the particular acts performed by each, with specification of time, place, and the evidence relied on to sustain the charges; until the proceedings shall assume, as it were, the form, and be conducted by the legal rules of a criminal trial, in which the government of the United States is to present itself as the prosecutor, and the accused as the defendants.

It is believed that such a course is unprecedented in diplomacy, and is a dangerous departure from that hitherto pursued in similar cases. If generally adopted, it would introduce a new element of discord into international intercourse, which could not fail to disturb the peace of nations, and would inevitably lead to a protracted controversy, engendering at each step in its progress hostile feeling between the parties.

Though the example of this government may not be much regarded, I will refer to an instance of a recent date, in a matter of less grave importance, but of similar character to that under discussion, as illustrating the course which, in the opinion of this government, should have been pursued in this case. Not long since her Majesty's minister, Mr. Crampton, represented to this government that the barque Maury was being fitted out in the port of New York as a privateer to depredate upon the commerce of the allies. The evidence, if it could be called such, to support the charge, consisted of affidavits detailing loose rumors, and some circumstances about her equipment, which justified a bare suspicion of an illegal purpose. If there could be a case which would warrant the course suggested by her Majesty's ministers in respect to the complaint of this government against British recruitments within the United States, it would be that of the barque Maury; but the President, without the slightest hesitation or delay, ordered proceedings to be instituted against that vessel and against all persons who should be found to be implicated. All the alleged causes of suspicion were immediately investigated, and the

result, which showed the utter groundlessness of the charges, was promptly communicated to her Majesty's government.

If this government, acting upon the rule now prescribed in the case of British recruitments in this country, had replied to that of Great Britain, on the complaint against the barque Maury, that inasmuch as Mr. Crampton had not made any definite charge; had not named the persons accused, with a precise statement of their acts or when and where done, or produced the evidence on which he intended to rely to support his allegations, so that the persons concerned might have an opportunity to deal with it, nothing would be done, no step would be taken, until these preliminary matters should have been attended to: would such a reply in the case of the Maury have been what her Majesty's ministers might have expected? would it have been deemed courteous or friendly to the British government?

Lord Clarendon may be well assured that such a reply, in the case of the Maury, would have been quite as satisfactory to her Majesty's government as is his reply to this government in relation to its remonstrances and complaint against British recruitments within the United States.

Until this government was apprized by Lord Clarendon's despatch of the 16th of November of the position adverted to in regard to its complaint with reference to that proceeding, it indulged a confident expectation that her Majesty's ministers would take the usual course in such cases. The grounds of the complaint were fully disclosed; the offence clearly stated; some of the British officers named, and others, with more than usual precision, indicated. Sufficient information was given to direct their inquiries, but her Majesty's government has refused to do more than offer to pass on the issues which may be made between this government and those officers, after the pleadings and proofs are laid before them, as prescribed in Lord Clarendon's despatch.

For most controlling reasons, which, on reflection, will readily occur to Lord Clarendon, this process of litigating the case is declined.

So far as respects the British officers and agents, whose acts in carrying out the project of recruiting in disregard of law were performed beyond the limits of the United States; and, also, those persons who acted within those limits, but have since left the country, nothing further remains to be done. This result is deeply regretted: the sense of wrong which led this government most reluctantly to present their conduct to the consideration of her Majesty's government, as a violation of the law and rights of the United States, survives the hope of redress.

Before I present the President's views in respect to other British functionaries who are implicated, and who now hold official positions here by the consent of the Executive, it seems to be proper that other parts of the despatch of the 16th of November should be particularly noticed.

In that despatch Lord Clarendon has subjected to unfair suspicion the purpose of this government in seeking redress, and insisting upon it after the proceedings complained of have ceased, and, as he alleges, by the interposition of the British government.

The circumstances which led to the abandonment of the recruiting scheme will be adverted to hereafter.

This act is regarded by her Majesty's government as a favor for which the United States are not sufficiently grateful. If it be a favor, then the recruiting, carried on as it was by British authority in the United States, was the exercise of a right. The application was made to her Majesty's government to discontinue recruiting by its officers because it was a national offence. This government cannot receive the mere suspension of wrong-doing, even if unintentional, as a favor; and consequently does not consider Lord Clarendon's reflection upon it for not so receiving it as at all deserved. 'As the proceedings for raising recruits for the British service in this country resulted from instructions to her Majesty's officers here and in the British provinces, issued by the ministers of the crown for that express purpose, the order to discontinue them is regarded as a mere act of justice, but in no respect a satisfaction for a past injury.

This government asked, as a part of the satisfaction due to it from Great Britain, that the men who had been enticed, contrary to law, from the United States into the British provinces, and there enlisted into her Majesty's service, should be discharged. A casual reading of Lord Clarendon's despatch of the 16th of November may convey an impression that this demand has been acceded to; but such is not its true import. The language of that despatch is as follows: "If it can be shown that there are persons now in the foreign legion who have been enlisted, or hired, in violation of the United States law, as well as of British law, her Majesty's government will be prepared to offer them their discharge." The offer is not to discharge them if it be shown that they were enlisted or hired in violation of the law of the United States. That fact would be of no avail, unless it were shown that they were also enlisted or hired in violation of British law. This is no concession whatever to the government of the United States; for, if the men were enlisted or hired contrary to the law of Great Britain, no antecedent transaction within the United States would strengthen their just claim to be discharged. The single fact of having been enlisted or hired in violation of the United States law would not be available under this offer, unless the further fact be shown that the enlistment was also in violation of the British law.

Notwithstanding the illegal means which were used to entice or decoy them to leave the United States for the purpose of being enlisted into the British foreign legion, their subsequent enlistment in the British provinces would be valid according to the British law. Under this offer by Lord Clarendon, probably not one of the many hundred men who were induced, contrary to law, to leave the United States and to go to the British provinces, and were there enlisted, could obtain his discharge, either on his own application or on that of this government. This offer of her Majesty's minister does not, therefore, in any respect, meet the demand of this government.

Lord Clarendon has placed on record "certain facts"—seven in number—the correctness of which he says he does not doubt will be admitted by me. After duly considering them, I am constrained to say there is scarcely one of them, bearing on the merits of the case

under discussion, which I can admit without essential modifications. Some of them I shall make the subject of remark. One of these alleged facts, or rather statements, which I cannot omit to notice, is, "that as soon as it became apparent that the United States government was averse to the scheme, and that it might lead to violations of the United States law, the project was abandoned out of deference to the United States;" and he adds an expression of regret that "this proof of good faith and good will of her Majesty's government has not been noticed or appreciated by the government of the United States."

If the fact on which Lord Clarendon relies for the proof of good faith and good will shall be shown to be essentially different from what he conceives it to be, he will understand the cause why this government does not appreciate it as he does.

In a question of this kind, dates are important. When did it become apparent that the United States government was averse to the recruiting scheme, and how soon thereafter was it abandoned?

I hope to be able to convince Lord Clarendon that they were not contemporaneous events; that far the greatest number of objectionable acts committed by the British officers was performed long after this government had, in the most public and emphatic manner, reprobated the recruiting project; after prosecutions had been pending for months against the agents of British officers, with the full knowledge of these officers, and also, as it was fair to presume, with the knowledge of their government.

Mr. Crampton's intercourse with these recruiting agents commenced in January. On the 4th of February he notified Strobel and Hertz, by a note addressed to each, that he was then able to give them precise instructions on the subject alluded to in a previous personal interview; and there can be no doubt that the subject alluded to was, recruiting within the United States. That scheme did not significantly develop itself in our principal cities until the month of March. Immediately thereupon, the United States government manifested the most decided, unequivocal, and public demonstration of averseness and resistance to it. Their attorney at New York was instructed to suppress enlistment in that city, and prosecute those engaged in it.

On the 23d of March he called upon the United States marshal for his assistance and co-operation, and addressed to that officer a letter containing a copy of the United States law against foreign recruiting within their jurisdiction, stating that "the government is determined to execute the laws to their fullest extent." In that letter he employed the following language: "I wish you to use such means as may be at your command to prevent any violations of the laws of the United States which are passed to preserve our neutrality."

On the succeeding day this letter was published in the journals of the city of New York of the widest circulation, and shortly thereafter in the "Washington Union," and throughout the country.

Numerous arrests of persons charged with enlisting men for the British service were made in March: their examinations before the magistrates were published at that time in the newspapers of the

country ; their cases were laid before grand juries, and indictments found against them. Not only in New York, but at Boston, Philadelphia, and other places, the most vigorous efforts were publicly made by the federal officers, acting under instructions of the United States government, to arrest these recruitments for the British service and bring the offenders to justice. No local transaction was ever more generally known or more freely animadverted on. It provoked much excitement against the persons engaged in it ; and had it then been known that they were in fact employed by officers in eminent military and civil positions in her Majesty's service, under instructions from their government, it might have been difficult to restrain public indignation within proper limits.

The landing of the "first instalment of the foreign legion," as it was called, from the United States at Halifax, was chronicled with much exuberance of joy in the Halifax Journal of the 2d of April. As that is a British journal, in the interest of her Majesty's government, and published where Sir Gaspard le Marchant, the governor of Nova Scotia, who is implicated in the scheme of recruiting, resides, and where the main depot for receiving the men thus enlisted was situated, I will make one or two extracts from its article of the 2d of April :

"The brig America arrived from Boston on Friday, with the first instalment of troops for the foreign legion, amounting to seventy ; most of them are Hungarians and Germans. They were landed at the Queen's wharf, and marched up to the military hospital, followed by an immense throng of citizens, who were anxious to have a peep at them."

For the purpose of showing that the active opposition of this government to the enlistment scheme at that early day was notorious, not only through the length and breadth of this country, but in her Majesty's North American provinces, and to the British officials who had set the scheme on foot, and were superintending its execution, I direct attention to the extract from the same article in the Halifax Journal which contained the foregoing announcement of the arrival of the "first instalment" at Halifax : "Brother Jonathan," says that journal, "is making a great fuss about this foreign legion, and is using all kinds of proclamations to prevent the shipping of recruits, &c., threatening to arrest parties engaged. He is a very smart fellow, but Bluenose is sometimes too much for him. They would like to lay hands on Mr. Howe, but he is so slippery they cannot catch him."

This state of things—this public excitement—the obvious fact that vigorous measures had been taken by this government to put a stop to this scheme of recruiting for the British army, so widely known here in March, could not but have been well known in England by the middle of April ; and if the recruiting project was abandoned as soon as the aversion to it by this government was manifested, it should have ceased in that month. Such, however, was not the fact. Was it abandoned in the succeeding months of May or June ? Through both of these months the recruiting agents swarmed more numerous than at any previous time in various parts of the Union, and the

scheme was never prosecuted more vigorously than at that period. Mr. Crampton spent nearly all the month of May in the British provinces in forwarding that scheme, though he must have been aware as early as March of the fact that the British recruiting agents had been prosecuted by the United States.

The disclosures on the examination and trial of the offenders first brought to light the information which rendered it quite certain that British officials had instigated these recruitments; that the agents employed were engaged by them, and were plentifully supplied with means for carrying on the service.

No abatement of the efforts to execute the scheme, except what was fairly attributable to the criminal proceedings against some of the recruiters, was visible when you were directed in my despatch of the 15th of July, as you had been in that of the 9th of June, to call the attention of her Majesty's government to the subject. No knowledge of the abandonment of the scheme was received here until the 4th of August.

More than four months before it was known here that there was any intention to suspend the scheme, this government had, in the most public manner, signalized its utter repugnance to the proceedings under it; and nearly two months before any notice of such intention was received here, instructions were sent to you to remonstrate against it, and to claim satisfaction for the part which British officers had taken in the perpetration of this international offence.

I have presented this detail of facts to show the reasons why I cannot admit, as the Earl of Clarendon assumes I would, the correctness of his statement, "that as soon as it became apparent that the United States government was averse to the scheme, and that it might lead to violations of the United States law, the whole project was abandoned out of deference to the United States."

The President cannot adopt the opinion of Lord Clarendon, that the question between the two countries has shrunk into the narrow limits he has assigned to it. It is true, the scheme is at length abandoned, and this government accepts his assurance that it is not about to be revived; but the right to revive it, and to carry it out to the same extent as heretofore, is held in reserve. If nothing more is to be done, the United States are left without indemnity for the past or security for the future; and they will be understood as assenting to principles which have been once resorted to, and may be again, to lay open their territories to the incursions of the recruiting agents of any belligerent that may have occasion to augment its military force.

Another of the facts put on record by the Earl of Clarendon, which he assumes I will admit to be correct, is, "that Mr. Marcy was in confidential communication with you [Mr. Crampton] on the subject for months without ever, that I am aware of, warning you against attempting anything of the kind, or stating that the United States would resist or resent it, apart from any question of municipal law; thus, in effect, acquiescing, and only insisting that the United States law should be respected."

It gives me pleasure to say, that my intercourse with Mr. Crampton has been intimate, friendly, and perhaps it may be regarded as

having been in some degree confidential. I resisted the evidence tending to implicate him in the recruiting project until it became too powerful to be any longer withstood. Scarcely anything could have occurred more painful to me than to be obliged, by a high sense of duty, to controvert in any way, or even to qualify, a statement which it is fair to presume has had his sanction. The charge imputes to me official delinquency, but I shall notice it only on account of its direct bearing upon the merits of the case under discussion. If I gave him no warning beyond insisting upon the observance of the United States law, it was because I had not at that time any knowledge of the extent of the recruiting scheme. He had satisfied me that his government had no connexion with it, and was in no way responsible for what was doing in the United States to raise recruits for the British army. The first intimation that I had been misled in this respect reached me while Mr. Crampton was absent in the British provinces, shortly before my despatch of the 9th of June was sent to you.

It is not for me to raise the question whether Mr. Crampton has or has not complied with his instructions to have "no concealment" with me on the subject, but I am quite certain that on no occasion has he intimated to me that the British government or any of its officers was, or had been, in any way, concerned in sending agents into the United States to recruit therein, or to use any inducements for that purpose; nor did he ever notify me that he was taking, or intended to take, any part in furthering such proceedings. Such a communication, timely made, would, probably, have arrested the mischief at its commencement.

Very soon after the first development of the recruiting operations here, Mr. Crampton read to me a letter, dated the 22d of March, addressed by him to the British consul at New York, the contents of which I here insert:

"I have received your letter of the 20th instant, [March,] enclosing a printed handbill, signed Angus McDonald, and informing me that the said McDonald states to you that he has issued it by the authority of her Majesty's government.

"I have to state to you, that Angus McDonald has no authority from her Majesty's government for the issue of the handbill in question, or for hiring or retaining any person in the United States to go beyond the limits of the same with intent to be enlisted in her Majesty's service.

"This would constitute an infraction of the neutrality laws of the United States, (act of Congress of 1818, section 2,) and her Majesty's government, however desirous they may be to obtain recruits for the British army, are still more anxious that the laws of the states with which her Majesty is at peace should be respected."

I regarded this act of Mr. Crampton as a disavowal by the British government, as well as by himself, of all participation in the recruiting proceedings, then just commenced within the United States. Lord Clarendon ought not to believe that Mr. Crampton was more communicative to me than he had been to his own government. As late as the 16th of July last, after the orders for abandoning the

scheme had been issued, Lord Clarendon was in utter ignorance that a single agent had ever been sent into the United States, or employed therein, for the purpose of recruiting for the British army. This is proved by the following extract from his despatch of that date :

“Her Majesty’s government do not deny that the acts and advertisement of these self-constituted and unauthorized agents were in many instances undoubted violations of the law of the United States ; but such persons had no authority whatever for their proceedings from any British agents, by all of whom they were promptly and unequivocally disavowed.”

Lord Clarendon seems not to be aware of a fact which interrupted for at least a month, in the busiest season of recruiting, all communication whatever between Mr. Crampton and myself.

Not long after Mr. Crampton read to me his letter to Mr. Barclay, which satisfied me at that time that her Majesty’s government had not only no connexion with the recruiting then going on in the United States, but discountenanced and condemned it, he left Washington, went to the British provinces, and did not return hither until the early part of June. He made no disclosures to me after his return in regard to the object of his visit to the provinces. What he did in furtherance of the recruiting scheme during this month’s absence was but imperfectly known until about the time of Hertz’s trial, and I am not indebted for this knowledge to any communication from Mr. Crampton. If the opportunity afforded by any “confidential communication” between Mr. Crampton and myself was not turned to a good account, and blame is imputable to either, it certainly does not attach to me. Mr. Crampton could not have been ignorant of what is now established beyond doubt, that a scheme for raising troops for the British service, within the United States, had been approved and adopted by her Majesty’s government ; that authorized agents, furnished with instructions and pecuniary means, and stimulated by the promise of commissions in the British army, and other tempting rewards, had been employed to induce persons to leave this country, and go into the British provinces, for the express purpose of entering into the British service ; and that many were prevailed on to do so, had embarked for Halifax free of expense in vessels employed by British authority for that purpose, and, on arriving at Halifax, had enlisted and been enrolled in the British foreign legion.

It is with reluctance that I perform the duty of bringing into view Mr. Crampton’s connexion with some of the agents who were employed in carrying out the recruitment system, and who have, in doing so, violated the law and sovereign rights of this country.

The intercourse between Mr. Crampton and Mr. Hertz, who was convicted in September last for violating the neutrality law of the United States, is established by Mr. Crampton’s two letters to Hertz—one dated the 27th of January, and the other the 4th of February, 1855. The originals of both, in the handwriting of Mr. Crampton, were produced to the court at the trial of Hertz. In the latter Mr. Crampton says : “With reference to our late conversation, I am now enabled to give you some more definite information on the subject to which it related.”

This connexion being established, it is allowable to allude briefly to Hertz's account, verified by his oath, of what took place between himself and Mr. Crampton in relation to recruiting in this country. Nothing is known of Hertz which can affect his veracity, except the fact that he was engaged in recruiting for the British army within the United States contrary to law, and has been convicted for that offence.

Hertz says: "All that I did in procuring and sending men to Halifax for the foreign legion was done by the advice and recommendation of Mr. Crampton, Mr. Howe, and Mr. Matthew; I was employed by Mr. Howe, and acted as his agent, with the knowledge and approbation, of Mr. Crampton and Mr. Matthew; Mr. Matthew knew of both the expeditions I sent; he approved and encouraged me in sending them away; he encouraged me by his advice and counsel, and in giving me money to send them away."

Mr. Max F. O. Strobel acted a more conspicuous part than Mr. Hertz, and his conduct in the affair under consideration requires to be more fully traced. In the statement here presented in regard to his proceedings and connexion with British officers, and among them with Mr. Crampton, I intend to rely almost entirely upon original documents in possession of this government. I do not mean, however, by this restriction, to cast the slightest doubt upon the credibility of Mr. Strobel.

Mr. Crampton's letter to Mr. Strobel was dated on the same day (February 4) as that addressed to Hertz, and is expressed nearly in the same terms.

After Mr. Strobel's interviews with Mr. Crampton in Washington, he embarked in the recruiting service, and suddenly rose to the rank of "captain of the first company of the foreign legion." He went with a detachment of recruits, raised in Philadelphia, to Halifax; was exultingly received into fellowship with the military and civil officers of the highest position in her Majesty's service there stationed; was invited to partake of the hospitalities of "his excellency Sir Gaspard le Marchant," of "Colonel Clark, and the officers of the seventy-sixth regiment;" and of "Colonel Fraser, Colonel Stotherd, and the officers of the royal artillery and royal engineers;" and the original cards of invitation, addressed to him, were produced on Hertz's trial.

After such an endorsement of his character, it would seem that the testimony of Captain Strobel, even if uncorroborated, should command confidence.

Mr. Strobel, who had then acquired the rank of "captain of the first company in the foreign legion," and Mr. Crampton were again brought together at Halifax, and were engaged there for some time in making further arrangements for recruiting within the United States.

Original documents, now in possession of this government, show that there can be no mistake as to the object of Mr. Crampton's visit to Halifax, and that it had special regard to recruitments in the United States for the British service.

Bruce McDonald, who appears to have been a secretary in the executive department of Nova Scotia, addressed a letter to "Captain

Strobel, first company foreign legion," dated "Provincial Secretary's office, 3d May, 1855," in these words:

"Dear Sir: I am directed by his Excellency the Lieutenant Governor to introduce to you the bearer, Lieutenant Kuntzel. He comes with a letter to Sir Gaspard from Mr. Crampton. You will please explain to him the steps necessary for him to take to secure a commission."

On the 13th of May, the second or third day after Mr. Crampton's arrival at Halifax, J. W. Preston, lieutenant of her Majesty's 76th regiment, who had charge of the depot at Niagara for the reception of recruits sent from the United States, wrote to Captain Strobel as follows:

"My dear Strobel: I am directed by the general to acquaint you that Mr. Crampton wants to see you, at his house, at 10 o'clock to-morrow morning; be punctual. If you like, come up to my room at half-past 9 o'clock, and we will go together."

These letters corroborate Captain Strobel's statement, that Mr. Crampton, while at Halifax, was engaged about the recruiting business within the United States. He afterwards went with Captain Strobel to Quebec, for the same purpose.

Passing, without comment, the plan for recruiting, which Strobel says was prepared at the request of Mr. Crampton, and approved by him and Sir Gaspard le Marchant, I propose to offer some remarks upon the instructions furnished by Mr. Crampton, while in the provinces, to the recruiting agents who were to go to "Buffalo, Detroit, or Cleveland," "to make known to persons in the United States the terms and conditions upon which recruits will be received into the British service." This paper will be found, with the letters referred to, in Hertz's trial. Its genuineness, I presume, will not be questioned. It is framed with great adroitness, and, as it may be resorted to for a defence of Mr. Crampton's conduct, it is entitled to a careful consideration.

These instructions show that the persons sent into the United States to raise recruits therein for the foreign legion were authorized agents of British officers, and received directions for the guidance of their conduct from her Majesty's minister to this government. It is thought to be unreasonable in this government to complain of any of her Majesty's officers, because the agents thus employed were "enjoined carefully to refrain from anything which would constitute a violation of the law of the United States." A similar injunction to the agents first employed was also contained in the directions which preceded the instructions issued by Mr. Crampton in May; and he well knew how utterly it had been disregarded by them. As his visit to the British provinces had special relation to the recruiting service, it cannot be presumed that he was uninformed of what had then happened to those agents in Philadelphia, New York, and Boston, through which cities he passed on his way to Halifax. This government had, as early as March, ordered prosecutions against the recruiting agents in those cities for having violated the law of the United States; many had been arrested for that offence, and against several of them grand juries had found bills of indict-

ment. Instead of disconnecting himself from the proceedings which had led to this disastrous result, Mr. Crampton went to Halifax and Quebec to make further arrangements for sending other recruiters into the United States. He could have had no sufficient reason to believe that those who received fresh instructions, however cautiously devised, would pay any more regard to his injunction not to violate the law of the United States than Hertz and others had done. His experience of the past should have deterred him from renewing the experiment. As these instructions were furnished to many agents, they doubtless were framed with a view to bear a critical inspection, and, in case of emergency, to be adduced as proof to show that special regard was intended to be paid to the United States neutrality law. They will, however, hardly answer that purpose. There can be no doubt that these revised instructions were intended to impress the recruiting agents with the expediency of greater circumspection in their business, but it is evident that the motive for this caution had much more respect for the success of the recruiting project than for the United States law. This is apparent from the following paragraph of these instructions:

"7. It is essential to success that no assemblages of persons should take place at beer-houses, or other similar places of entertainment, for the purpose of devising measures for enlisting; and the parties should scrupulously avoid resorting to this or similar means of disseminating the desired information, inasmuch as the attention of the American authorities would not fail to be called to such proceedings, which would undoubtedly be regarded by them as an attempt to carry on recruiting for a foreign power within the limits of the United States; and it certainly must be borne in mind that the institution of legal proceedings against any of the parties in question, even if they were to elude the penalty, would be fatal to the success of the enlistment itself."

Though the last instructions are a restriction upon the construction which Lord Clarendon has given to the law and rights of the United States, they would, even if literally observed, infringe both. This government maintains that in every instance where a person, whether a citizen or a foreigner, has been brought to the determination to leave this country for the purpose of entering into a foreign service as a soldier or sailor by any inducements offered by recruiting agents here, the law of the United States has been violated.

There certainly can be no doubt of the violation of the law of the United States in every case where one party, the recruit, has been induced by the terms offered to him actually to leave the United States for the purpose of entering into foreign military service, and the other party has furnished the means, and borne the expense of taking him to a foreign depot, in the expectation that he would consummate the act by an enlistment. It will not, I presume, be denied that several hundred cases of this kind actually occurred in carrying out the scheme of British recruitment. The very design of employing agents for such a purpose, to act within the limits of the United States, involved in its consequences an infringement of that law.

It is the solemn duty of the government of the United States to

maintain this construction of their neutrality law, and the attempt to set up and sustain a different one has created much surprise ; that it has been done by a friendly government, with which the United States are most anxious to maintain and strengthen the relations of amity, is the cause of deep regret.

When the President presented the case to the consideration of her Majesty's government, with the assurance that he had such information as compelled him to believe that British officers, in eminent stations, were implicated in a scheme which had resulted in an infringement of the rights of the United States, and a violation of their law, and asked for some satisfaction for the wrong, he certainly did not expect that the conduct of these officers would be justified upon principles which impair the sovereignty of the United States as an independent nation, and by an interpretation of their law which makes it entirely ineffective for the purposes intended.

Some satisfaction for the injury was confidently expected, but nothing that can be regarded in that light has been offered ; and this government is compelled, in vindication of its rights and laws, to take a course which it sincerely hoped her Majesty's government would have rendered unnecessary.

Her Majesty's minister to this government, Mr. Crampton, has taken a conspicuous part in organizing and executing the scheme for recruiting for the British army within the United States. Were it possible, with due regard to the evidence and disclosures in the case, to assign him a subordinate part in that scheme, even that would not allow the President to change the course which he is obliged, under the circumstances, to pursue towards him. Any participation in the project, as it has been developed, of raising recruits in this country for the British service, was incompatible with his official relations to this government. His connexion with that affair has rendered him an unacceptable representative of her Britannic Majesty near this government, and you are directed by the President to ask her Majesty's government to recall him.

Mr. Rowcroft, the British consul at Cincinnati, and Mr. Matthew, the British consul at Philadelphia, are implicated in the recruiting project, and you are further directed by the President to ask for their removal for that cause.

The persons connected with the British consulate at New York have been actively engaged in furthering the recruiting scheme. Mr. Stanley, the assistant or clerk of the consul, has taken a more open and effective part than the consul himself, and is now under an indictment for violating the law against foreign recruiting. The consul, Mr. Barclay, could not but know of Mr. Stanley's conduct in that matter, but he still retains him in the consulate. Besides the responsibility that rightfully attaches to Mr. Barclay for the improper conduct of an employee in his office, and under his immediate and daily observation, this government is satisfied that he has himself not only favored the recruiting for the British army, but has participated in it. Moreover, the improper conduct of Mr. Barclay in the case of the barque Maury has justly given offence to the commercial community in which he resides, and with which he has official connexion.

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For these reasons, this government deems it proper to instruct you to ask the government of Great Britain to withdraw Mr. Barclay from the post of British consul at New York.

You are directed by the President to read this despatch to the Earl of Clarendon, and, should he desire it, to hand him a copy.

The copies of the original documents to which I have referred are contained in Hertz's trial. I send you herewith an authentic report of that trial, which you will offer to Lord Clarendon as a document connected with this despatch. I also send herewith a copy of the proceedings of the Chamber of Commerce in the city of New York relative to Mr. Barclay's conduct in the case of the barque Maury. This, also, you will present to Lord Clarendon, as furnishing one ground for the request herein made for the withdrawal of Mr. Barclay.

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

JAMES BUCHANAN, Esq., &c., &c., &c.

Mr. Buchanan to Mr. Marcy.

[Extract.]

LEGATION OF THE UNITED STATES,

London, February 1, 1856.

SIR: I had an interview, by appointment, on Tuesday last, with Lord Clarendon, at the Foreign Office. After some preliminary conversation on the subject of the approaching peace with Russia, I informed him I had come on purpose to read to him your despatch to me of the 28th ultimo, (December,) in reply to his despatch to Mr. Crampton of the 16th November last. Before proceeding to this, however, I expressed my desire to correct an error, or rather an omission, in his report of a remark made by myself, contained in his despatch to Mr. Crampton. He said he "would be very sorry if any such error had been committed by him; that nothing certainly was further from his intention." I replied that I had not the most remote idea he had done this intentionally, and I had no doubt it was a mere inadvertence; but still, it was proper for me to correct it. I then read to his lordship the following paragraph from his despatch to Mr. Crampton of the 16th November:

"Before I proceed to offer any remarks upon this despatch, (your No. 118, of the 13th October,) it will be proper to state that when it was read to me by Mr. Buchanan, I had no cognizance of Mr. Marcy's despatch of the 15th July, to which it alludes, and of which a copy was also transmitted to you; and upon my observing this to Mr. Buchanan, he said he had not thought it necessary to communicate it to me, as, before it had reached him, he had received my note of the 16th July, which he thought would finally settle the question that had arisen between the two governments."

I then observed that his lordship's omission consisted in not having

added the qualifications which I made at the time to this remark, that when I received your despatch of the 15th July I had not the least idea of Mr. Crampton's complicity in the business of recruiting. (In truth, I never had until I received your private letter of the 2d September.) His lordship said he "did not recollect that I had made this remark at the time; though this was quite probable, as he did recollect I had previously informed him, more than once, when speaking in reference to the satisfaction I had expressed in transmitting to you his note to me of the 16th July, that I had no idea at the time of Mr. Crampton's complicity in the affair." I stated it was quite certain I had made this remark to him at the time. I had always been on my guard in conversing with him on the subject, from the time I first heard from you of Mr. Crampton's alleged complicity. He said he had no doubt I was correct in my recollection; and I told him that in this I could not be mistaken, not only because my memory was distinct, but because I had made notes of our conversation soon after it occurred. He said, for his own part, he never had time to make such notes, and repeated he had no doubt my statement was correct, and expressed his regret that he had not embraced my remark in his despatch to Mr. Crampton, but observed that he did not see its importance. I told him it might, possibly, be of some consequence to myself, and I had ever considered Mr. Crampton's complicity in the affair a matter of very grave importance. I then mentioned that in other respects his statement was not altogether correct, and I repeated to him the language which I had employed on the occasion, as follows:

"I did not deem it necessary to communicate this despatch (that of the 15th of July) to your lordship until I should hear from Mr. Marcy on the subject of your note of the 16th of July, which I thought at the time would finally settle the question, because I had not then the least idea of Mr. Crampton's complicity in the business of recruiting."

Yours, very respectfully,

JAMES BUCHANAN.

ATTORNEY GENERAL'S REPORT TO THE PRESIDENT.

ATTORNEY GENERAL'S OFFICE,
February 27, 1856.

In answer to that part of the resolution of the Senate of the 25th instant, which calls for evidence and documents to show the connexion of agents and officers of Great Britain with the alleged violation of the laws and sovereign rights of the United States, the Attorney General has the honor to lay before the President a copy of a correspondence and accompanying documents, with the attorneys of the United States for the district of Massachusetts, the southern district of New York, the eastern district of Pennsylvania, and the southern district of Ohio; and also a transcript of his official opinion of the 9th of August, pursuant to the President's order of the 6th of August last.

C. CUSHING.

To the PRESIDENT.

List of papers accompanying the report of the Attorney General to the President, of February 27, 1856.

The President of the United States to the Attorney General, August 6, 1855.

Mr. Cushing to the President, August 9, 1855.
Mr. McKeon to Mr. Marcy, March 22, 1855.
Mr. Cushing to Mr. McKeon, March 23, 1855.
Mr. McKeon to Mr. Cushing, March 24, 1855.
Mr. McKeon to Mr. Cushing, October 16, 1855.
Mr. McKeon to Mr. Cushing, October 17, 1855.
Mr. Cushing to Mr. McKeon, October 20, 1855.
Mr. McKeon to Mr. Cushing, November 1, 1855.
Mr. Cushing to Mr. McKeon, December 8, 1855.
Mr. McKeon to Mr. Cushing, December 11, 1855.
Mr. Cushing to Mr. Van Dyke, March 26, 1855.
Mr. Van Dyke to Mr. Cushing, March 29, 1855.
Mr. Van Dyke to Mr. Cushing, September 10, 1855.
Mr. Cushing to Mr. Van Dyke, September 12, 1855.
Mr. Cushing to Mr. Van Dyke, September 17, 1855.
Mr. Van Dyke to Mr. Cushing, September 27, 1855.
Mr. Cushing to Mr. Van Dyke, September 28, 1855.
Mr. Cushing to Mr. Van Dyke, December 18, 1855.
Mr. Van Dyke to Mr. Cushing, December 19, 1855.
Mr. Cushing to Mr. Jewett, December 8, 1855.
Mr. Jewett to Mr. Cushing, December 18, 1855.
Mr. Cushing to Mr. Jewett, January 10, 1856.
Mr. Cushing to Mr. Hallett, December 8, 1855.
Mr. Hallett to Mr. Cushing, December 24, 1855.
Mr. Cushing to Mr. Hallett, January 17, 1856.

EXECUTIVE MANSION,
Washington, August 6, 1855.

The reports of the district attorneys of the southern district of New York and the eastern district of Pennsylvania, on the subject of the levy of troops in the United States by official or other agents of Great Britain, are returned herewith to the Attorney General, and his opinion is required upon the question, whether or not the acts reported are in violation of the municipal law and of the national sovereignty and neutrality; and especially upon the question, what legal responsibility, if any, those acts devolve on the British minister and British consuls.

FRANKLIN PIERCE.

ATTORNEY GENERAL'S OFFICE,
August 9, 1855.

SIR: I have the honor to submit herewith the considerations of law applicable to the enlistment of troops within the United States by the British government, in so far as the facts appearing in the documents before me concern the personal action either of the British minister or of the British consuls in the United States.

There is no room for doubt as to the law regarding the general question.

In the first place, the act of Congress of April 20th, 1818, contains the following provision:

"SEC. 2. *And be it further enacted*, That if any person shall, within the territory or jurisdiction of the United States, enlist or enter himself, or hire or retain another person to enlist or enter himself, or to go beyond the limits of, or jurisdiction of the United States, with intent to be enlisted or entered into the service of any foreign prince, state, colony, district, or people, as a soldier, or as a marine or seaman on board of any vessel of war, letter of marque, or privateer, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding one thousand dollars, and be imprisoned not exceeding three years." (3 Stat. at Large, p. 448.)

Of course, as the levy of troops within the United States for foreign service is forbidden by law, no such right has, by Executive permission, been given to Great Britain. To the contrary of this, the British government was expressly notified, by letter of Mr. Marcy to Mr. Crampton of April 28th, 1854, that no enlistments in the United States would be permitted either to Great Britain or to Russia. (Ex. Docs. 1st session 33d Congress, vol. xii, No. 103, p. 5.)

In the second place, independently of the municipal relations of the acts in question, they constitute, whether they be the acts of the British government or of its minister and consuls, a violation of the sovereignty and of the neutral rights of the United States.

The rule of public law is unequivocal on this point, and is correctly stated as follows, by Wolf:

"Since the right of raising soldiers is a right of majesty, which

must not be violated by a foreign nation, it is not permitted to raise soldiers on the territory without the consent of its sovereign." (*Jus Gentium*, s. 1174.)

By Vattel: "As war cannot be carried on without soldiers, it is evident that, whoever has the right of making war, has also naturally that of raising troops. The latter, therefore, belongs likewise to the sovereign, and is one of the prerogatives of majesty." (Vattel, *Droit des Gens*, l. iii, ch. ii, p. 293.)

* * * * *

"As the right of levying soldiers belongs solely to the nation or the sovereign, no person must attempt to enlist soldiers in a foreign country without the permission of the sovereign; and, even with that permission, none but volunteers are to be enlisted; for the service of their country is out of the question here, and no sovereign has a right to give or sell his subjects to another.

"Whoever undertakes to enlist soldiers in a foreign country without the sovereign's permission, and, in general, whoever entices away the subjects of another state, violates one of the most sacred rights of the prince and the nation. This crime is distinguished by the name of kidnapping or man-stealing, and is punished with the utmost severity in every well-regulated state. Foreign recruiters are hanged without mercy, and with great justice. It is not presumed that their sovereign has ordered them to commit a crime; and supposing even that they had received such an order, they ought not to have obeyed it; their sovereign having no right to command what is contrary to the law of nature." * * * "But if it appears that they acted by order, such a proceeding in a foreign sovereign is justly considered as an injury, and as a sufficient cause for declaring war against him, unless he make suitable reparation." (Vattel, *Droit des Gens*, l. iii, ch. ii, p. 298.)

By Kluber: "A state entirely neutral has the right to exact, even by force, if necessary, that belligerent powers do not use its neutral territory for the purposes of war; that they take not therefrom munitions of war, and provisions and other immediate requirements of war, for their armies; that they do not make there any military preparations, enrolments, or collections of troops; that none of their troops, armed or unarmed, pass through, &c., &c.; that they exercise there no act of hostility against the persons or property of the subjects of the hostile state; that they do not occupy it militarily, or make it the theatre of war." (*Droit des Gens Moderne de l'Europe*, s. 285.)

By G. F. de Martens: "Whilst, in cases of rupture between two nations, a neutral state preserves the full enjoyment of its territorial rights, it can, in the absence of treaties, prohibit during the war, as in time of peace, any passage or sojourn of foreign troops, and much more forbid the occupation of its fortresses, the recruiting, mustering and exercising troops; and it may use force against those who shall attempt to violate the prohibition." (*Precis du Droit des Gens*, s. 350.)

By Galiani: "All governments are accustomed to forbid, under capital penalty, any foreigner to make military engagements or recruits within their territory; in doing which they do no more than to

sustain and defend a natural right, and one inherent in every sovereignty." * *

"The neutral sovereign who leaves his subjects at liberty to engage themselves in the service of a foreign belligerent, will not therein be wanting to his neutral duties, provided it has been customary with his nation; if it has been usual in time of peace; if it accords with the physical and political condition of the country; if, in fine, he practices indifference and impartiality, not denying to one belligerent what he concedes to the other. But if a sovereign has not been accustomed to allow his subjects to enlist in the military or naval service of other governments, it may well be doubted whether he may, for the first time, do it on the occurrence of war between two states, each of which is in amity with him. I am not prepared to say that in so doing he gives equality of advantage and facilities to both; for there might be inequality in the need of the belligerents; for perhaps *one of them, suffering from deficiency of men, would derive precious and powerful succor from such permission, while to the other it would be useless and superfluous*. In my opinion, therefore, this question comes within the general rule of essential neutral duties: that is, to continue in the anterior condition, it being lawful to persevere in what has been usual, but unlawful to innovate." (*Dei Doveri de' Principi Neutrali*, pp. 325, 327, 329.)

By Hautefeuille: "The duties of belligerents may be summed up in very few words. The belligerent ought to abstain from the employment of all such indirect means to molest his enemy as, in the accomplishment of their object, would first injuriously affect a neutral nation. He ought to respect, in the most complete and absolute manner, the independence and sovereignty of nations at peace: in a word, he ought to treat them in the same manner as if the most profound peace continued to prevail. Those nations, in fact, are at peace with him, fulfilling strictly their duties of neutrality; they have the right to enjoy the advantages of their position, and to be exempt from all the evils of war; the duty of the belligerent is to abstain from the infringement of this right. Thus neutral territory ought to be held sacred and inviolable by nations at war; these last ought not, on any pretext, nor in any manner, to make use of such territory to subserve their purposes of hostilities, directly or indirectly. The passage of armed troops, the levying of soldiers, &c., &c., without the consent of the sovereign, would constitute an offence against the sovereignty of the neutral, and a violation of the duty of the belligerent." (*Droits et Devoirs des Nations Neutres*, tom. i, 312, 313.)

"As to the territory of neutral nations, the occurrence of hostilities makes no change nor modification of their rights; they remain inviolable as in time of peace. Their territory ought, then, to be sheltered from all enterprises of the belligerents, of whatever nature they may be. The consequences of war ought never to be felt by them directly; that is to say, no act of hostility should be committed against them, under any pretext.

"Belligerent nations, in this respect, have only the rights they possessed in time of peace, because war never injuriously affects nations at peace. Belligerents cannot, then, in any case, without the

permission of the sovereign, use neutral territory, I do not say directly, for the operations of war ; but cannot even make use of it for any advantage whatever, to the prejudice of their enemy. This permission cannot be granted to them by the neutral without violating his duties.

“The principle of the inviolability of the territory being admitted, the conclusion, as absolute as the principle itself, follows : that a belligerent has no right to use neutral territory, in any manner whatever, without the permission of the neutral nation, sovereign of such territory ; and cannot, therefore, levy troops there, and march armies through it, &c., without this permission.

“The neutral has the incontestable right to resist every attempt the belligerent may make to use his territory ; to oppose it by all the means in his power, and even by force of arms, in the same manner as a citizen has the right to defend his property by all the means placed at his disposal by the law to which he is subject.” (*Ibid*, tom. ii, pp. 48, 49.)

I do not perceive that this doctrine is explicitly produced in any one of the books of international law published during the last few years in Great Britain. Possibly their silence on this point may be caused by the policy of their country, which, under the kings of the house of Hanover, has frequently relied upon foreign recruits in time of war. However this may be, some of the English works referred to recognise the right of every sovereignty to the exclusive use of its own territory and resources, (Wildman’s *International Law*, vol. i, p. 64,) but without adverting to the present logical consequence of this right ; although one of them discusses fully the collateral question, whether a state loses its neutrality by permitting foreign levies, and concludes, properly, that, if it be permitted to one, it should be permitted to each of the respective belligerent powers. (Manning’s *Law of Nations*, bk. iii, ch. 1.)

In this connexion, the same accredited English writer considers and confutes the assumption, crudely and erroneously taken up in Great Britain, that some doctrine to the contrary of this is to be found in Vattel ; and, upon an elaborate review of the whole subject, he concludes thus :

“Foreign levies may not be allowed to one belligerent, while refused to his antagonist, consistently with the duties of neutrality. When treaties, *antecedent* to war, permit such exclusive privilege, then * * no complaint of breach of neutrality can be maintained by the excluded party. But when no antecedent treaty exists, such a permission would be a violation of neutrality, the principles of which demand the strictest abstinence from assistance to either party ; and, of course, will not admit that exclusive privileges, in so important a particular, should be granted to one belligerent. Nor have the customs of Europe, derived from the practices of the middle ages, established any usage that prevents this question from being settled in accordance with the dictates of reason, or, in other words, with the law of nature.” (Manning, *ibid*, p. 180.)

Mr. Manning’s reasoning is conclusive so far as it goes. And the imperfection of other English law-books in this respect is of no ac-

count, as against the general authority of the expounders of international law in all the rest of Christendom.

Misconstruction has also been placed on the fact that Bynkershoek maintains the right of private or voluntary expatriation, even for the purpose of foreign military service. But he does not express or countenance the thought that a foreign belligerent may recruit soldiers in a neutral country without the consent of its sovereign. On the contrary, he exhibits in full the legislation of the United Provinces, according to which it was a capital offence to make enlistments in the country without consent of the States General. (*Quæst. Jur. Publici*, lib. i, c. 22.)

Besides, Great Britain has, in her own legislation, sanctioned and adopted the rule of public law, by enacting that if any person whatever, within the United Kingdom, or in any part of the dominions of Great Britain, shall hire, engage, retain, or procure, or shall attempt or endeavor to hire, retain, engage, or procure, any person whatever to enlist, or to enter or engage to enlist, as an officer, soldier, sailor, or marine, either on land or sea service, for or under or in aid of any foreign prince or government, or to go or agree to go or embark from any place in the British dominions for the purpose, or with the intent, to be so enlisted, entered, or engaged as aforesaid, every person so offending shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment, at the discretion of the court having jurisdiction of the act. (Act of 59 Geo. III, ch. 69.)

We, in the United States, acting in the sense of natural right, and following the rules of public law as explained by the jurists of continental Europe, asserted and established this doctrine at a very early period, in opposition to the undertaking of the French government, through its minister, M. Genet, to man or equip cruisers within the United States. (Mr. Jefferson to M. Genet, June 17, 1793—American State Papers, For. Aff., vol. i, p. 154.)

And our judicial text-books are full and explicit on the same point. (Wheaton by Lawrence, p. 498 ; Kent's Com., lec. 6.)

It is obvious to the most superficial reflection, that no distinction of principle exists in the levy of a military force in the neutral country, as between the land and sea service ; and if Great Britain may raise within the United States volunteers for her land service, so Russia may raise them for her marine service—that is, may fit out privateers in our ports ; and, indeed, if we grant or permit the former privilege to Great Britain, we must, in like manner, in order to be impartially neutral, concede the latter privilege to Russia.

And it is equally obvious that foreign recruiting cannot be forbidden or permitted under the influence of any assumed national sympathies or antipathies. Individual or national preferences are quite immaterial in such a question. The United States cannot, either lawfully or honorably, practise a simulated neutrality ; nor can a dissembled alliance be claimed or expected from us, either by Great Britain or by Russia.

From the well-established rules and principles of law, then, it is plain to conclude :

1. The acts of enlistment in question are contrary to the municipal law of this country, and indictable as a high misdemeanor.

2. Those acts, if permitted to one belligerent, must be permitted to all, in observance of impartial neutrality.

3. Being against law in the United States, and therefore not permitted to Great Britain, if undertaken by her as a government, they afford just cause of war, being direct national violation of the territorial sovereignty of one nation by another.

4. Whatever agents of the British government, whether official or unofficial, acting voluntarily or by orders, have participated in such acts, are not only guilty of a criminal infraction of the statute law, but also, in the language of Vattel, of violating one of the most sacred rights of the nation.

I presume that if, in the present case, the British minister imagines that the acts performed under his direction were not contrary to the municipal law, it must be on the ground that the recruits were not completely enlisted in the United States; that is, did not here in all form enter the military service of Great Britain. That assumption is altogether erroneous. The statute is express, that if any person shall hire or *retain* another person to go beyond the limits or jurisdiction of the United States, *with intent* to be enlisted or entered into the service of any foreign state, he shall be deemed guilty of the defined misdemeanor.

It is possible, also, that he may have supposed that a solemn contract of hiring in the United States is necessary to constitute the offence. That would be mere delusion. The words of the statute are "hire or retain." It is true, our act of Congress does not expressly say, as the British act of Parliament does, "whether any enlistment money, pay, or reward shall have been given and received or not," (Act 59 Geo. III, ch. 69, s. 2;) nor was it necessary to insert these words. A party may be retained by a verbal promise, or by invitation for a declared or known purpose. If such a statute could be evaded or set at naught by elaborate contrivances to engage without enlisting, to retain without hiring, to invite without recruiting, to pay recruiting money in fact, but under another name of board, passage-money, expenses, or the like, it would be idle to pass acts of Congress for the punishment of this or any other offence.

However this may be, and if such were the thought of the British government, it has not been successfully carried out; for, on the evidence before me, including the general instructions of the British minister and his direct correspondence with recruiting officers in the United States and others, my opinion is positive, that the parties have made themselves amenable to the penalties of the statute, and may be convicted before any competent court of the United States.

It is further to be observed, in conclusion of this branch of the subject, that whether the acts of the British minister and his agents, in recruiting troops within the United States, do or do not come within the technical provisions of the act of Congress, is altogether immaterial to the question of international right, as between this government and that of Great Britain. If, by ingenious evasions of the letter of a penal statute, intended only for private malefactors, the British gov-

ernment should, nevertheless, levy troops here, the fact of the statute being thus defeated and trampled under foot would serve only to augment the public wrong.

Suppose, for instance, that the British government shall have said to its officers, civil or military, in the British North American provinces, and to its diplomatic or consular agents in the United States: "You will proceed to raise so many men in the United States; but remember that to do so is forbidden by the municipal law of that country, and is indictable as a misdemeanor; you will, therefore, take care to proceed cunningly in this, so as not to incur the penalties of the statute." Such instructions, while they might have the effect of raising the troops, as desired by the British government, without its agents incurring the penalties of the statute, would but constitute a more flagrant and aggravated violation of the national dignity and the sovereign rights of the United States.

In truth, the statute in this matter is of but secondary account. The main consideration is the sovereign right of the United States to exercise complete and exclusive jurisdiction within their own territory; to remain strictly neutral, if they please, in the face of the warring nations of Europe; and of course not to tolerate enlistments in the country by either of the belligerents, whether for land or sea service. If there be local statutes to punish the agents or parties to such enlistments, it is well; but that is a domestic question for our consideration, and does not regard any foreign movement. All which it concerns a foreign government to know is, whether we, as a government, permit such enlistments. It is bound to ask permission of us before coming into our territory to raise troops for its own service. It has no business to inquire whether there be statutes on the subject or not. Least of all has it the right to take notice of the statutes only to see how it may devise means by which to evade them. Instead of this, it is bound, not only by every consideration of international comity, but of the strictest international law, to respect the sovereignty and regard the public policy of the United States.

Accordingly, when, at the commencement of the great European struggle between England and France, near the close of the last century, the French convention assumed to recruit marine forces in the United States, it was held by President Washington, and by his Secretary of State, Mr. Jefferson, as explained in the correspondence hereinbefore quoted, that by the law of nations, in virtue of our sovereignty, and without stopping to enact municipal laws on the subject, we had full right to repress and repel foreign enlistments, and, *e converso*, that the attempt to make any such enlistments was an act of gross national aggression on the United States.

When a foreign government, by its agents, enters into the United States to perform acts in violation of our sovereignty, and contrary to our public policy, though acts not made penal by municipal law, that is a grave national indignity and wrong. If, in addition to this, such foreign government, knowing that penal statutes on the subject exist, deliberately undertakes to evade the municipal law, and thus to baffle and bring into disrepute the internal administration of the country,

in such case the foreign government not only violates but insults our national sovereignty.

I repeat, then, that if it were to be supposed that the British government had so far forgotten what is due to its own dignity, as to instruct its agents within the territories of the German Bund, in the Netherlands, in the United States, to enlist recruits without respect for local sovereignty, but with care to avoid or evade the letter of local statutes, instead of diminishing, that would aggravate the injustice and the illegality of the proceeding in the eye of the law of nations, and the intensity of the public wrong as regards the neutral states, thus converted, without their consent, into a recruiting ground for the armies of Great Britain.

Such instructions would be derogatory to the public honor in another respect. They presume that the United States, without becoming the open ally of Great Britain, will, by conniving at the use of its territory for belligerent purposes, while professing neutrality, thus carry on, as already intimated, a dishonorable war in disguise against Russia.

It appears, however, that the British government, finding it impossible to keep the ranks of its army filled by voluntary enlistments, and being loth to encounter the responsibility of a law for conscription, for draughts on militia, for periodical service of its able-bodied men, or for any other systematic method of raising troops from its own population, introduced into Parliament a bill, entitled "An act to permit foreigners to be enlisted, and to serve as officers and soldiers in her Majesty's forces," but which was in fact a bill to authorize the government to employ agents to carry on recruiting service in the neutral states of Europe and America.

The law was earnestly objected to in its progress, as insulting to neutral states, and derogatory to the national dignity; but was passed, nevertheless, on the 22d of December, 1854. (Hansard's Debates, third series, volume 136, *passim*.)

At an early day after the passage of this act, measures were taken to recruit officers and men, for a proposed foreign legion, in the United States; those measures being publicly pursued under the official responsibility of Sir Gaspard le Marchant, lieutenant-governor of the province of Nova Scotia. A military depot was established at Halifax for the reception and enrolment of recruits; and Mr. Howe, a member of the provincial government, with other agents, came into the United States to make arrangements for engaging and forwarding the recruits, chiefly from Boston, New York, and Philadelphia. Subsequently, corresponding arrangements were made for collecting and forwarding recruits from the western States, by Buffalo or Niagara, through Upper Canada.

These acts were commenced and prosecuted with printed handbills, and other means of advertisement, and recruits were collected in depots at New York and elsewhere, and regularly transported to Canada, or Nova Scotia with undisguised notoriety, as if the United States were still a constituent part of the British empire. Of course they attracted great attention, and the various measures, whether legal or political, proper to put a stop to them, were instituted by your direc-

tion, through the instrumentality of the foreign or legal departments of the government of the United States.

In the course of the investigations which ensued, among the facts brought to light are some, in the documents referred to me, which unequivocally implicate not only British consuls but the British minister himself in the unlawful transactions in question, and so call for inquiry as to the rights of this government in reference to them and their government.

In the application of the general rules of law to the offences committed, it is necessary to distinguish between the case of any of the consuls and that of the minister.

The several district attorneys of the United States, within whose jurisdiction, respectively, the cases occurred, very properly assumed that the consuls were subject to indictment for infraction of the municipal law, and have proceeded accordingly—prosecutions having already been instituted in the southern district of Ohio against the consul at Cincinnati, and in the southern district of New York against an officer of the consulate of New York.

Nothing is better settled by adjudication in this country, than that foreign consuls are subject to criminal process for violation of the municipal laws. (*United States vs. Ravara*, ii Dall., 297; *Mannhardt vs. Soderstrom*, i Bin., 144; *Commonwealth vs. Kosloff*, i Serg. and R., 545; *State vs. De la Foret*, ii Nott and Mc., 217.)

These adjudications are in exact conformity with the law of nations in regard to consuls, as understood and practised not less in Great Britain than in the other states of Christendom. (See *Opin.*, November 4, 1854, MSS; also *Kent's Com.*, vol. i, p. 44; *Wheaton's El. by Lawrence*, 305.)

The only privilege which a consul enjoys, in this respect, in the United States, is that awarded to him by the constitution, of being tried by the federal courts: the effect of which is, that his case remains within the control of the general government, which may deal with it according to the convenience or the exigencies of its foreign policy, without impediment from the authority of any of the individual States of the Union. (*Const.*, art. iii, sec. 2; act of September 24, 1789, sec. 9—i Stat. at Large, p. 77.)

The consul at Cincinnati, as appears by the legal proceedings there, supposes that he is entitled to the benefits of certain peculiar stipulations in the consular convention between the United States and France, of February 23, 1853. If it were so, that would not serve him on the main point, because it does not exempt consuls from the criminal jurisdiction of either of the contracting governments. But this convention has no application whatever to the consular relations of Great Britain and the United States. Whether it applies or not to governments with which we have entered into stipulations to place our respective consuls on the footing of the most favored nation, is a question as yet *sub lite*. But there is no stipulation of that nature in existence, as between Great Britain and the United States. Of course, the duties and the rights of American consuls in Great Britain, and of British consuls in the United States, stand upon the law of nations, except as the same is modified by their treaties, and by the

local law of either country. The local law of each, as we have seen, withholds from consuls the diplomatic privilege of extraterritoriality. A British consul, therefore, has no just cause of complaint, if, when charged with an offence, he is held amenable to the criminal jurisdiction of the United States.

In addition to those ordinary means of redress in the case of the misconduct of a foreign consul, is that afforded by the law of nations. The President of the United States has the undoubted power, in his discretion, to withdraw the *exequatur* of any foreign consul. To justify the exercise of this power, he does not need the fact of a technical violation of law judicially proved. He may exercise it for any reasonable cause, whenever, in his judgment, it is called for by the interests or the honor of the United States. (De Clercq, *Guide des Consuls*, p. 101.)

On each of these points provision was made in the commercial convention between the United States and Great Britain of July 3d, 1815, which stipulates that "before any consul (in either country) shall act as such, he shall, in the usual form, be approved and admitted by the government to which he is sent; and, * * in case of illegal or improper conduct towards the laws or government of the country to which he is sent, such consul may either be punished according to law, if the law will reach the case, or be sent back; the offended government assigning to the other the reasons for the same." (Art. iv.)

This convention, by its terms, was to subsist only four years. By a subsequent convention, that of October 20, 1818, its duration was prorogued ten years, (art. iv;) and afterwards by the convention of August 6, 1827, for another ten years, and until denounced by either party on twelve months' notice.

For the rest, the stipulations of the convention of 1815, as continued by the conventions of 1818 and 1827, are but declaratory of the law of nations, as that is understood both in Great Britain and the United States.

In regard to the minister, it is clear, if he violate the laws of the government to which he is accredited, or otherwise offend its sovereignty, there is no remedy except in the manner and form prescribed by the law of nations. He enjoys an exemption from judicial process, which immunity is not so much his right as that of his government.

It was formerly held in England, as we see in March's case, reported by Rolle, in the time of James I., that, "although an ambassador is privileged by the law of nature and of nations, yet if he commit any offence against the law of nature or reason, he shall lose his privilege, but not if he offend against a positive law of any realm." (Rolle's R., p. 175.) No such distinction between *mala prohibita* and *mala in se*, as respects ambassadors, is now admitted, and their extraterritoriality is the unanimous doctrine of all publicists; and is recognised in England, as it is in the United States, by statute.

The whole question is learnedly discussed by Wildman, whose views are in accordance with those of Grotius and Bynkershoek, which now prevail throughout Christendom. (Institutes, vol. 1, p. 90.)

But the privilege of extraterritoriality is not conferred on a public min-

ister as a shield to crime. For any crimes which he may commit, the remedy varies according to the nature of the case.

As to offences against the municipal law of the country, committed by a foreign minister, or other person entitled to the privilege of diplomatic exterritoriality, we have a statute which declares that any writ or process against them, issued by any court, is utterly null and void. (Act of April 30, 1790, sec. 25.—1 Statutes at Large, p. 117.) And this immunity of public ministers has been the subject of judicial recognition in several instances. (See *United States vs. Hand*, ii Wash. C. C. R. 435; *United States vs. Liddle*, *ibid*, p. 205; *exparte Cabrera*, *ibid*, p. 232. See also *Wheaton by Lawrence*, p. 284; *Kent's Com.*, vol. 1, p. 38: *Opinion of Mr. Attorney General Lee*, of July 27, 1797.)

The cases of criminality on the part of a public minister may be distinguished into the following classes:

1st. If the crime committed by the minister affect individuals only, (*delicta privata*), the government of the country is to demand his recall; and if his government refuse to recall him, the government of the country may either expel him by force, or bring him to trial, as no longer entitled to the immunities of a minister. (*Kluber, Droit des Gens.*, sec. 211; *Ch. de Martens' Guide Diplomatique*, tom. 1, p. 88.)

2d. If the crime affect the public safety of the country, its government may, for urgent cause, either seize and hold his person until the danger be passed, or expel him from the country by force; for the safety of the state, which is superior to other considerations, is not to be perilled by overstrained regard for the privileges of an ambassador. (*Ibid*; see also *Kent*, vol. i, 38; *schooner Exchange vs. McFadden*, vii *Cranch*, 116, 139.) Indeed, it has been held, in such a case, in England, that the offending party may be proceeded against for treason. "If," it is affirmed in the case of *Rex vs. Owen*, "an ambassador compass and intend death to the king's person, in the land where he is, he may be condemned and executed for treason." (*Rex vs. Owen*, *Rolle's R.*, p. 188.) But that dictum is not in accord with precedents, which, in general, go no further than the arrest and confinement, and the eventual or the immediate expulsion, of a public minister, for treasonable acts, or acts dangerous to the security of the state.

Signal instances of the arrest or summary expulsion of public ministers in such a case, are collected by *Bynkershoek*, by *Wicquefort*, by *Wildman*, and by *Charles de Martens*, (*Causes Célèbres*.)

A very modern case of great notoriety is that of *Sir Henry Bulwer*, who, while British minister at *Madrid*, during the administration of the *Duke of Valencia*, (*General Narvaez*), being detected in complicity with domestic revolutionists, was required by letter of the *Duke of Sotomayor*, the Spanish minister of foreign affairs, to quit Spain immediately, and did so. (*Hernandez, España y el Visconde Palmerston*, *Madrid*, 1848.)

This incident occasioned a brief interruption of the diplomatic relations of the two governments; but Spain stood firm; and, as *Sir Henry Bulwer* had acted under the instructions of *Lord Palmerston*, the British minister of foreign affairs, the British government, after

some delay and the exchange of explanations, conscious that it had been placed in the wrong by Lord Palmerston, submitted to send a new minister to Madrid. (Hansard's Debates, third series, vol. 99, p. 347.)

3d. Finally, if the offence be grave, but not such as to compromise the public safety, the course of proceeding in accordance with the law of nations, and sanctioned by diplomatic usage, is to demand the recall of the minister, and meanwhile to refuse, or not, all further intercourse with him, according to the circumstances.

The United States have pursued this course in several instances, of which a memorable one, and exactly pertinent to the present case, is the demand on France for the recall of M. Genet, guilty of enlistments in this country without the consent of its government. (Am. State Papers, For. Aff., vol. i, No. 65.)

The public law and usage in this respect are well stated by a modern English author, who says:

"With respect to the dismissal of ministers, it is usual, where the matter admits of delay, first to demand his recall. * * But this is a mere act of courtesy, which cannot be expected on occasions of imminent peril. The dismissal of an ambassador on such occasions is not an assumption of jurisdiction, but a measure of self-defence, which no one has ever denied to be legal, in the case of ambassadors. * * If an ambassador use force, he may be repelled by force. * * When the danger is imminent, an ambassador may be seized as a public enemy, may be imprisoned, may be put to death, if it be indispensably necessary to our safety." (Wildman, Institutes, vol. i, p. 114.)

On the whole, the case of the British minister regarded in the light of established rules of the law of nations, and diplomatic usage founded thereon, would seem to resolve itself into, first, a question of strict right, and, secondly, of discretion in the exercise of that right.

It clearly is not a case affecting the security of the state, and thus needing or justifying the interposition of summary authority, as in the instance of the Prince of Cellamare, in France, (Ch. de Martens, *Causes Célèbres*, tom. i, p. 139,) Count Gyllenberg in Great Britain, (Foster's Crown Law, p. 187,) and many other cases of historical and legal notoriety or interest. No acts of violence are imputed to the British minister, nor any purpose or act threatening to the national stability of the United States. What is charged against him is conduct improper in a public minister, illegal as respects the municipal law, injurious to the national sovereignty. If sufficiently shown, it requires to be repressed in such manner as effectively to vindicate the public honor. Of strict right, the President may, as the Queen of Spain did in the case of Sir Henry Bulwer, send his passports to the British minister, with intimation to leave the country without delay; or he may well, in his discretion, adopt the milder course, as President Washington did in the case of M. Genet, that is, after affording to the British minister opportunity of explanation through the Secretary of State, then, if his explanation be not satisfactory, to demand his recall of the Queen's government. The personal esteem which the British minister justly enjoys here in other respects might counsel the latter course, more especially if the British

government, assuming the responsibility of his acts, should thereupon proceed to tender, in its own name, complete and ample satisfaction for having authorized or permitted such a flagrant wrong as the systematic attempt to recruit a military force in the United States, by the instrumentality of the lieutenant-governor of Nova Scotia.

I have the honor to be, very respectfully,
C. CUSHING.

The PRESIDENT.

SOUTHERN DISTRICT OF NEW YORK,
U. S. District Attorney's Office, March 22, 1855.

SIR: The enclosed handbill was brought to me this morning by Mr. McDonald, with the inquiry whether the employment therein indicated is contrary to law. He is to call again to-morrow.

I have arrived at the conclusion that this business is illegal, in contravention of section 2 of the act of 20th April, 1818.

I have the honor to remain, sir, your most obedient servant,

JOHN McKEON,
United States District Attorney.

Hon. W. L. MARCY,
Secretary of State, Washington, D. C.

[Enclosure.]

HIGHLY IMPORTANT TO THE UNEMPLOYED!

The British government having concluded to form a foreign legion in Nova Scotia, and to raise several regiments for duty in the province, offer a bounty of £6, or \$30, together with the pay of \$8 a month, rations, good clothing, and warm quarters, to every effective man, fit for military duty, from nineteen to forty years of age, to join which are invited English, Irish, Scotch, and Germans. The subscriber (with the view of assisting those who have not the means of paying their passage) hereby gives notice that he has opened a passage office, No. 36, Pearl street, (near Broad,) where he proposes to engage good passages by good vessels to Halifax, leaving twice or three times a week, for the sum of \$5, or procure through tickets by the railroad, leaving every morning, (Sundays excepted,) and arriving at St. John's, near Montreal, that evening, which passage-money must be paid him or his agent, by the parties, together with the small sum of fifty cents additional for commissions, on arriving at their destination in the province. It is hoped that those effective men who are now suffering and in distress, will avail themselves of this rare opportunity of bettering their condition before it is too late.

ANGUS McDONALD.

[Burrough's steam presses, 113 Fulton street, N. Y.]

ATTORNEY GENERAL'S OFFICE,
March 23, 1855.

SIR: The Secretary of State has referred to me your letter to him of the 22d instant, enclosing a handbill signed "Angus McDonald," who proposes to recruit soldiers for the military service of the British government, and advertises a recruiting station for that object at a place indicated in the city of New York.

Statements, corroborative of this document, appear in sundry newspapers of New York.

It is perfectly clear that any such enlistment is contrary to law. The act of Congress of April 20, 1818, not only forbids military enlistments in the United States, for a purpose hostile to any country in amity with us, but also by foreign states for any purpose whatever.

If the troops recruiting for Great Britain in New York are intended to serve against Russia, the undertaking is in violation of our neutrality; and, if not, still it is in violation of the sovereign authority of the United States.

Not long since the consul of the Mexican republic at San Francisco was duly tried and convicted there of this precise offence, in having enlisted persons in California for the domestic service of his government.

These views of the present question have been submitted to the President, and have his approbation; and he accordingly has directed me to advise you at once, in order to avoid delay, and to desire you to take the proper and lawful steps, in your discretion, to bring to punishment all persons engaged in such enlistments within your district.

I am, very respectfully,

C. CUSHING.

Hon. JOHN McKEON,
United States Attorney, New York.

SOUTHERN DISTRICT OF NEW YORK,
U. S. District Attorney's Office, March 24, 1855.

SIR: I have the honor to acknowledge the receipt of your favor of yesterday, expressing the views of the President in regard to the enlistment at this station of soldiers for Great Britain.

Permit me to say that I will, with great pleasure, carry out the directions contained in your letter.

In order to give publicity to the law, I yesterday officially addressed the marshal of this district, and desired him to use all the means in his power to preserve inviolate our neutrality laws. I enclose a copy of such letter.

I have the honor to remain, sir, your most obedient servant,

JOHN McKEON,
United States District Attorney.

Hon. CALEB CUSHING,
Attorney General United States, Washington, D. C.

SOUTHERN DISTRICT OF NEW YORK,
U. S. District Attorney's Office, March 23, 1855.

SIR: From the newspapers during the last few days, and from other sources, I am inclined to believe that persons in this city are engaged in recruiting men, and in shipping them to some place out of the jurisdiction of the United States, with the intent there to be formed into regiments, to serve in the present war of France, England, and their allies against Russia.

The United States are happily at peace with all the nations of the world. The continuance of peace to our country depends upon the strict enforcement of our neutrality laws. The government is determined to execute these laws to their fullest extent. This duty we owe to ourselves, and to all the nations with whom we are in amity.

I beg, therefore, to call your attention to the 2d section of the neutrality act of 1818, which provides that "if any person shall, within the territory or jurisdiction of the United States, enlist or enter himself, or hire or retain another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people, as a soldier, as a marine, or seaman on board of any vessel of war, letter of marque, or privateer, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding one thousand dollars, and be imprisoned not exceeding three years."

I wish you to use such means as may be at your command to prevent any violation of the laws of the United States, which are passed to preserve our neutrality.

I will cheerfully co-operate with you in such measures as you may adopt, to prevent the infraction of this important safeguard to our national peace and prosperity.

I have the honor to be, very respectfully, your most obedient servant,
JOHN McKEON,
United States District Attorney.

A. T. HILLYER, Esq.,
United States Marshal, New York.

SOUTHERN DISTRICT OF NEW YORK,
U. S. District Attorney's Office, October 16, 1855.

SIR: I have the honor to report, that on the 12th day of October instant I brought to trial in the district court of the United States an indictment against Joseph Wagner, charging him with having, on the third day of August last, hired and retained Abraham Cook to go beyond the limits of the United States with intent to be enlisted in the service of the Queen of Great Britain as a soldier.

The defendant was defended by Hon. Ogden Hoffman and several other eminent counsel. Judge Ingersoll presided, and delivered a charge to the jury, the substance of which is given in the enclosed

published statement. We were engaged in the trial for two days. The jury rendered a verdict of guilty on the 13th instant.

I have the honor to remain, your obedient servant,

JOHN McKEON,
United States District Attorney.

Hon. CALEB CUSHING,
Attorney General of the United States.

[Enclosure.]

Reported for the Journal of Commerce.

U. S. DISTRICT COURT, *Saturday.*

Before JUDGE INGERSOLL.—*Enlisting men for the British service.*

The trial of Joseph Wagner was resumed to-day. On the part of the defence another witness was examined, who corroborated the evidence of two others, that Wagner was in bed on the forenoon of the day when Cook swore he met him in the Bowery, and that on the afternoon of that day Wagner went to Boston.

The court, in charging the jury, recited the law of Congress under which the defendant was being tried, which we gave in our report of the first day's proceedings. The court then instructed the jury that this law provides that no person shall hire or retain any person to enlist or enter himself to go beyond the limits of the United States with intent to be enlisted as a soldier into the service of a foreign government. But if one person merely informs another that by his going to Halifax, or any foreign country, he could enlist as a soldier in the service of a foreign government, that would be no crime under the law of Congress. In such a case there would have been no hiring, or retaining by promise of hire, on either side; and the law does not punish any one for giving such information. Any resident of the United States has a right to go to Halifax with intent to enlist; that would be lawful; but it is not lawful for any one, by any consideration paid, or promised to be paid, to engage another person to go to Halifax with intent to there enlist as a soldier in the service of any foreign government. And if Cook agreed with Wagner that he would go to Halifax and enlist as a soldier under the British government; and if the consideration or inducement of such agreement on the part of Cook was a promise from Wagner that Cook should receive \$30 in advance, and \$10 per month for his services as a soldier under the British government; or if a part or the whole of the consideration of that agreement, on the part of Cook, was the payment of the passage of Cook from New York to Boston, or the promise to pay such passage; or if the consideration of such agreement, or motive which led to it, was any promise of money or any other valuable thing by Wagner, and Cook, when he entered into such agreement, had, for such consideration, the intent to go to Halifax and to there enlist as

a soldier under the British government, then the offence, under the act of Congress, is complete, and Wagner must be deemed guilty. But the mere giving information, or the merely starting to go, is not sufficient. There must have been some inducement such as the court stated. If the testimony of Cook cannot be depended on, the prosecution must fail. It was for the jury to determine whether they would give credit to Cook on the part of the prosecution, or to the three witnesses for the defence; they cannot all speak the truth. If the jury were not satisfied beyond all reasonable doubt, they would give a verdict for the defendant. If they were satisfied, they should find him guilty.

The jury found the prisoner guilty.

SOUTHERN DISTRICT OF NEW YORK,
U. S. District Attorney's Office, October 17, 1855.

SIR: I have the honor to inform you that I have indictments untried against various individuals, charging them with a violation of the law relative to foreign enlistments.

The proceedings which have been taken in this city, Philadelphia, and other places, have undoubtedly tended not only to the putting a stop to the enlistments for foreign service, but have also developed the connexion of the officials of the government of Great Britain, in this country, with a violation of our municipal laws.

The object of the prosecutions has been accomplished. It is evident that the parties against whom indictments have been found are but the instruments of others connected with a foreign power; and it has appeared to me that nothing can be gained by a further prosecution of individual cases.

I take the liberty of suggesting that I shall have your assent to stay further proceedings on the untried indictments.

I have the honor to remain, sir, your obedient servant,

JOHN McKEON,
United States District Attorney.

Hon. C. CUSHING,
Attorney General United States.

ATTORNEY GENERAL'S OFFICE,
October 20, 1855.

SIR: I have the honor to acknowledge the reception of your two communications of the 16th and 17th instant, in which you inform me of the conviction of Joseph Wagner, accused of the offence of being engaged in unlawfully recruiting troops within the United States for the service of Great Britain, and request instructions as to other indictments of the same class still pending in your district.

These prosecutions were instituted, primarily, for the purpose of

arresting the continued perpetration of acts derogatory to the sovereignty and public honor, and contrary to the neutral policy of the United States.

The punishment of crime in these, as in all other cases of infringement of statute provisions, of whatever nature, was an object also, but in these particular cases a secondary one; for the individual misdemeanor of the parties implicated, whether they be citizens or foreigners, and whether private or official persons, is but a minor incident of the national indignity and wrong inflicted on this government by the foreign government, in whose behalf and for whose benefit they presume to violate the laws of the United States.

If, therefore, you find that what has thus far been done by you so judiciously and successfully suffices to maintain the public peace and vindicate the public justice within your district, you will make such disposition, as in your discretion seems best, of the remaining complaints against any persons who do not hold an official relation to the British government.

As to guilty persons of the latter description, whether yet under prosecution or not, their criminal acts stand on a different ground, and additional instructions regarding them will be forwarded to you in due time.

Such persons are not only indictable, in common with all others who violate the law of the land, but they are also violators of the international law, and subject to special consideration by the United States, unless disavowed and punished by their own government.

I have the honor to be, your obedient servant,

C. CUSHING.

Hon. JOHN McKEON,

Attorney United States, New York.

SOUTHERN DISTRICT OF NEW YORK,
U. S. District Attorney's Office, November 1, 1855.

SIR: On the 16th October, ultimo, I had the honor to advise you of the conviction of Joseph Wagner, before Judge Ingersoll, upon an indictment for a violation of the neutrality laws of the United States.

Since then, the counsel for the accused expressed the desire to move for a new trial, and on that account sentence was deferred from day to day until the opening of the court this morning, when no motion in arrest being made, Judge Ingersoll sentenced Wagner to an imprisonment for two years, and to the payment of a fine of one hundred dollars. In passing sentence, Judge Ingersoll stated that he inflicted this punishment as a warning and example to others, and to prevent this country from being embarrassed, or running any risk of embarrassment, in the conflicts of other powers.

I have the honor to remain, sir, your obedient servant,

JOHN McKEON,

United States District Attorney.

Hon. CALEB CUSHING,

Attorney General.

ATTORNEY GENERAL'S OFFICE,
December 8, 1855.

SIR: I am directed by the President to request you to report, for his information, a list of all the criminal complaints entered in your district against persons accused of recruiting for the service of Great Britain, giving the names of the parties, and the time of each alleged act.

I am, very respectfully,

C. CUSHING.

Hon. JOHN McKEON,
United States Attorney, New York.

SOUTHERN DISTRICT OF NEW YORK,
U. S. District Attorney's Office, December 11, 1855.

SIR: Your letter of the 8th instant, requesting me to report, for the information of the President, a list of all the criminal complaints entered in this district against persons accused of recruiting for the service of Great Britain, was received this morning only.

I have the honor to enclose to you the required information, adding thereto the name of the complainant.

With great respect, your obedient servant,

JOHN McKEON,
United States District Attorney.

Hon. CALEB CUSHING,
Attorney General.

List of criminal complaints.

[Enclosure.]

Date.	Name of accused.	Name of complainant.
April 5, 1855.....	Adam Lutz.....	Grand jury.
May 3, 1855.....	Theodore Remy and Oscar Cromrey.....	Henrich Hoehmand.
May 3, 1855.....	Julius Parkus and Wilhelm Schumacher.....	Peter Oswald.
May 7, 1855.....	—— Wachter and —— Belger.....	Max X. Miller.
May 7, 1855.....	—— Wachter.....	August Herbert.
May 8, 1855.....	—— Grambacher.....	Adolph Bishop.
May 11, 1855.....	Andrew Lutz.....	August Meichel.
May 16, 1855.....	—— Rozenbaum.....	Henry Kohler.
May 18, 1855.....	—— Wachter.....	Edward Schmidt.
May 18, 1855.....	John B. Bettinger.....	Edward Schmidt.
June 7, 1855.....	Philip Mellim and Albert Hahn.....	John Gutkun.
June 7, 1855.....	Philip Mellim.....	Adam Helrichs.
June 7, 1855.....	—— Kaufman, —— Rosenbaum, and —— Weise.....	Charles Dorble.
June 7, 1855.....	—— Kaufman and —— Rosenbaum.....	Philip Hartegan.
June 12, 1855.....	George Spetzer.....	John Paulus.
June 13, 1855.....	—— Kartzebin.....	H. Bekker.
June 13, 1855.....do.....	Amred Tiel.

LIST—Continued.

Date.	Name of accused.	Name of complainant.
June 23, 1855-----	Milfort Von Casstensen, ----- Thomann, ----- Jorgensen -----	Jan. Tujeriah.
June 23, 1855-----	John Bougard-----	Augustus T. Leeberman.
June 25, 1855-----	Captain Schumacher, Oscar Cromey, Max- imillian A. Thorman, Frederick E. M. Carsteusen, Joseph Smolensky, Joseph Traska, Charles H. Stanley -----	Antonio Rosenbaum.
Aug. 5, 1855-----	Joseph Wagner-----	Lawrence Berlin.
Aug. 5, 1855-----	-----do-----	Abraham Cook.

SOUTHERN DISTRICT OF NEW YORK,
United States District Attorney's Office.

ATTORNEY GENERAL'S OFFICE,
March 26, 1855.

SIR: Information having been communicated to the President that military enlistments for the British service are going on in Philadelphia, he directs me to transmit to you the enclosed copy of a letter, of the 23d instant, to John McKeon, esq., attorney of the United States for the southern district of New York, and to request you to proceed against all parties engaged in such enlistments within your district.

I am, very respectfully,

C. CUSHING.

JAS. C. VAN DYKE, Esq.,
District Attorney of the United States, Philadelphia.

OFFICE OF ATTORNEY U. S., EASTERN DIST. PENNSYLVANIA,
140 Walnut street, Philadelphia, March 29, 1855.

SIR: Your communication of the 26th instant, but postmarked on the 28th, calling my attention to a rumor that certain parties were enlisting in the city of Philadelphia for the military service of the British government, and enclosing a copy of a letter, dated March 23, 1855, to John McKeon, esq., attorney for the United States for the southern district of New York, and directing me, by request of the President, to proceed against all parties engaged in such enlistments within this district, is this morning received.

In reply to your communication, I have the honor to report: that about ten days ago information was left at my and the United States marshal's office by some citizens of Philadelphia, who desired their names should be kept in confidence, that several persons were engaged in employing men to go to Halifax, under the pretext of work-

ing on the railroad, but with the understanding that, when there, they were to enlist in the British service. I immediately determined to apprehend the parties, and, by the assistance and vigilance of the United States marshal for this district, succeeded in capturing, on the 27th instant, four persons who have been engaged in keeping open, under the name of a commission office, a recruiting station, and also fifteen persons who had engaged to go to Nova Scotia for the purpose of enlisting. A partial hearing has been had before the United States commissioner, and the parties have been held to bail for a further hearing on Saturday next.

* * * * *

In connexion with the marshal of this district, who has already exerted much energy and care in the matter, I shall continue, in pursuance of the instructions contained in your communication, to apprehend and bring to punishment all who shall be found violating our neutrality or national sovereignty in this respect.

Very respectfully,

JAS. C. VAN DYKE,

U. S. District Attorney, Eastern District of Pennsylvania.

Hon. C. CUSHING,

Attorney General of the United States.

OFFICE OF ATTORNEY U. S., EASTERN DIST. PENNSYLVANIA,
140 Walnut street, Philadelphia, September 10, 1855.

SIR: There are now pending some twenty bills of indictment against various persons charged with enlisting persons for the war in the Crimea. I have fixed Monday next for the trial of all the cases, and am about sending for the witnesses.

* * * * * I shall be pleased to receive your instructions at as early a day as possible.

I am, sir, very respectfully, your obedient servant,

JAS. C. VAN DYKE.

Hon. C. CUSHING,

Attorney General of the United States.

ATTORNEY GENERAL'S OFFICE,
September 12, 1855.

SIR: In reply to your letter of the 10th instant, on the subject of the indictments pending against persons charged with recruiting for the military service of Great Britain, I have the honor to make the following observations:

Mr. McKeon has been advised of the desirableness of conferring with you personally, either by himself or his assistant, in regard to new evidence to which he may have access, and which can be useful to you.

I suggest the expediency of trying only a part of the cases now, especially if you fail to convict in some leading case.

But the most important consideration is this :

This government has, of course, addressed to that of Great Britain such demands of public redress and satisfaction in the premises as the national honor requires. But the government of Great Britain, with extraordinary inattention to the grave aspect of its acts—namely, the flagrant violation of our sovereign rights involved in them—has supposed it a sufficient justification of what it has done, to reply that it gave instructions to its agents so to proceed as not to infringe our municipal laws; and it quotes the remarks of Judge Kane in support of the idea that it has succeeded in this purpose. It may be so: Judge Kane is an upright and intelligent judge, and will pronounce the law as it is, without fear or favor.

But if the British government has, by ingenious contrivances, succeeded in sheltering its agents from conviction as malefactors, it has in so doing doubled the magnitude of the national wrong inflicted on the United States.

This government has done its duty of internal administration, in prosecuting the individuals engaged in such acts. If they are acquitted, by reason of a deliberate undertaking on the part of the British government not only to violate as a nation our sovereign rights as a nation, but also to evade our municipal laws, and that undertaking shall be consummated by its agents in the United States—when all this shall have been judicially ascertained, the President will then have before him the elements of decision as to what international action it becomes the United States to adopt in so important a matter.

I am, very respectfully,

C. CUSHING.

JAS. C. VAN DYKE, Esq.,
United States Attorney, Philadelphia.

ATTORNEY GENERAL'S OFFICE,
September 17, 1855.

SIR: I desire to make a further suggestion in regard to the trial of parties charged with recruiting soldiers in the United States for the service of the British government.

It is known that instructions on this subject were given by that government to its officers in the United States. We are told by Lord Clarendon that those officers had "stringent instructions" so to proceed as not to violate the municipal law—that is, to violate its spirit, but not its letter. If so, the instructions themselves violated the sovereign rights of the United States.

But, in the meantime, every consul of Great Britain in the United States is, by the avowal of his government, subject to the just suspicion of breach of law, while, apparently, he must either have disobeyed his own government, or, in obeying it, have abused his con-

sular functions, by the violation of his international duty to the United States.

In these circumstances, it is deemed highly necessary that the British consul in Philadelphia, or any other officer of the British government, shall not be suffered to interfere in the trials, as he did on a previous occasion; that no letter of his be read, except in the due form of evidence; and that, if he has anything to say, he shall be put on the stand by the defence, in order that he may be fully cross-examined by the prosecution.

It is clear that he has no right, by any rule of public law or of international comity, to be heard in the case by the court, otherwise than as a witness, whether enforced or volunteer.

I have the honor to be, very respectfully,

C. CUSHING.

JAMES C. VAN DYKE, Esq.,
Attorney United States, Philadelphia.

OFFICE OF ATTORNEY U. S., EASTERN DIST. PENNSYLVANIA,
140 Walnut street, Philadelphia, September 27, 1855.

SIR: I have the honor to report that, in the case of the United States vs. Henry Hertz and Emanuel C. Perkins, charged with hiring and retaining persons to go beyond the limits or jurisdiction of the United States, with the intent to enlist in the service of her Most Gracious Majesty the Queen of Great Britain and Ireland, Hon. J. K. Kane this morning charged the jury in a learned and able opinion. The jury retired at 11 o'clock, and at 15 minutes after 11 returned with a verdict of not guilty as to E. C. Perkins, and of guilty as to Henry Hertz, on all the bills of indictment which I had submitted to their consideration.

I will transmit to you, in a few days, a full report of the whole case, as reported by James B. Sheridan, phonographic reporter.

* * * * *

I am, sir, very respectfully, your obedient servant,

JAMES C. VAN DYKE,
Attorney for United States.

Hon. C. CUSHING,
Attorney General of United States.

*

ATTORNEY GENERAL'S OFFICE,
September 28, 1855.

SIR: I have received your letter of the 27th.

I congratulate you on the complete success of the prosecution.

* * * * *

I am, very respectfully,

C. CUSHING.

JAMES C. VAN DYKE, Esq.,
United States Attorney, Philadelphia.

ATTORNEY GENERAL'S OFFICE,
December 8, 1855.

SIR: I am directed by the President to request you to report, for his information, a list of all the criminal complaints entered in your district against persons accused of recruiting for the service of Great Britain, giving the names of the parties, and the time of each alleged act.

I am, very respectfully,

C. CUSHING.

JAMES C. VAN DYKE, Esq.,
United States Attorney, Philadelphia.

OFFICE OF ATTORNEY U. S., EASTERN DIST. PENNSYLVANIA,
Philadelphia, December 19, 1855.

SIR: Your communication of the 8th December, instant, was duly received. In reply, I have the honor to report that the annexed statement will show the different causes which have originated in this district against persons charged with enlisting for the military service of Great Britain. You will observe by that list that there are, apparently, five different warrants issued. The whole five may be properly classified into two sets of causes—first, those numbered 1, 2, 3, which resulted in the indictments against Hertz and Perkins; second, those numbered 4 and 5, which resulted in the indictments against Baron Vanschwatzenhorn and Emanuel Schuminski.

The recruiting business in Philadelphia was commenced about the first of March last, at an office opened for that purpose, in Third street, near Walnut. When I first received information as to the object in opening this office, I directed inquiry to be made for the names of the parties who had charge of it. It was, however, soon found to be impossible to get the names of any of the parties; and, learning that persons by the names of Gilroy, Gallaher, and others, had enlisted at that office, a warrant was issued for their arrest, with a clause authorizing the marshal to arrest such other persons as might be pointed out as being engaged in the same business. By virtue of this warrant, the company, about leaving under the command of William Budd, was arrested, together with all the persons in the office. Among them were the defendants mentioned in case No. 2 of annexed schedule, except E. C. Perkins, who was, at the same time, arrested at his boarding-house. These parties being arrested, and having determined upon the propriety of making witnesses for the government of the defendants named in case No. 1, of course that case was abandoned.

Of the defendants mentioned in case No. 2, Hertz and Perkins were alone held for trial; the evidence showing clearly that Hertz was the principal offender, and that all the other defendants, except Budd and Perkins, were mere visitors at the office of Hertz. It being at that time impossible to show the real design of Hertz in sending

men to Halifax, except by the testimony of William Budd, I concluded to accept his offer to give testimony for the government.

The cause No. 3 arose out of a charge made against William Bucknall on the oath of William Budd. The evidence against him was, that he had brought to Philadelphia a number of handbills, and left them at the office of Mr. Hertz. The bills thus brought on were the printed bills with the arms of her Britannic Majesty, as published on page 15 of the report of the trial of Henry Hertz.

On *habeas corpus* before honorable John K. Kane, Wm. T. Bucknall was discharged; the judge holding the government to the proof of some overt act of enlistment within the jurisdiction of the United States, or of sending some person beyond the jurisdiction of the United States, knowing that the person so sent had the intention, when beyond such jurisdiction, to enlist, &c., &c. There was no proof of any act of this kind on the part of Mr. Bucknall, and he was discharged. It was the opinion of the court on this primary hearing to which the British press refers, when they say that Judge Kane had decided that the action of the British agents in the premises was not a violation of the municipal law of the United States. This, however, was not at that nor at any subsequent time, the opinion of the court. The extent of the adjudication was, that the evidence at that hearing in relation to the action of Mr. Bucknall did not establish, as against him, a *prima-facie* case within the letter of the act of Congress.

Of the causes thus far referred to, indictments were sent to and found by the grand jury against Henry Hertz and E. C. Perkins. There were a number of joint bills against these defendants. Some of them have been tried, and convictions have been had of Henry Hertz, who is yet awaiting sentence.

E. C. Perkins coming within the ruling of Judge Kane, on the hearing of the *habeas corpus ex relatione* Wm. T. Bucknall, he was acquitted.

The full report of this trial you have already received in the printed pamphlet, copies of which have been transmitted to your department.

The causes marked 4 and 5, on the annexed schedule, were prosecutions against some persons at the time unknown, who had opened an office in the upper part of the city amongst the German population. The warrant No. 4 was issued, and under it the defendants mentioned in case No. 5 were brought in. The defendants were held for their appearance at the next term of the district court of the United States. Bills of indictment were found by the grand jury, and the defendants have, since that time, neglected to appear in court. These defendants acted under the directions of Mr. Hertz. They were procured by him to open their office for the recruiting business, after the office in Third street had been closed by the arrest of Henry Hertz *et al.* There have been no other prosecutions for violation of the neutrality laws growing out of enlistments for the British service.

I am, sir, very respectfully, your obedient servant,

J. C. VAN DYKE,

Attorney U. S. Eastern District Pa.

Hon. C. CUSHING,

Attorney General United States.

[Enclosure.]

Copies of entries from Commissioner's docket.

No. 1.—United States *vs.* Gilroy, McGowen, Gallagher, *et al.*, charged on oath of E. W. Powers with violating neutrality laws.

1855, March 28, 1 o'clock a. m., *process exit*.

No. 2.—United States *vs.* E. C. Perkins and others by description, charged on oath of E. W. Powers with violating neutrality laws.

1855, March 28, 1 o'clock a. m., *process exit*.

Eo die process returned, and E. C. Perkins, Henry Hertz, Augustus Stahl, Barret Leob, John Jacob Boschart, and William Budd, brought up.

The following named witnesses were examined, viz: William Jones, Andrew McManus, Michael Gilroy, Wm. A. Leese, Dennis McLaughlin, and E. W. Powers.

Mr. Van Dyke moves that the defendants, except Augustus Stahl, be held for further hearing.

Each is held in the sum of \$2,000, as follows:

E. C. Perkins, with Wm. Magill as surety.

Henry Hertz, with Jacob Aub as surety.

Barnet Leob in \$500, with Philip Lang as surety.

J. J. Boschart in \$500, with N. Fend as surety.

William Budd is committed.

Mr. Van Dyke moves for commitment of the following witnesses: Augustus Qeese, John Riddlebury, Wm. Eckert, Charles Weaver, James McConnell, Philip Sibet, H. Kerstein, Robert Kern, Peter Muhr, Wm. Finley, William Jones, and James Johnson. *Commitments exit*.

March 31, 1855. Defendants are present, with counsel; Mr. Vaux for Wm. Budd.

Mr. Remak for Hertz, Leob, and Boschart.

Mr. Guillon for Mr. Perkins.

The following witnesses are examined, viz: Michael Gilroy, P. W. Conroy, H. B. Mann, Edward G. Webb.

The district attorney moves a continuance till Friday next at 12 o'clock.

Defendants Leob, Boschart, and Budd committed for want of bail, \$500.

April 2. Defendants present. Wm. McGill sworn; John Jenkins sworn; F. M. Wynkoop sworn.

On motion of district attorney, Wm. Budd is discharged on his own recognisance.

Wm Budd is called and sworn as a witness for the government.

April 16, 1855. Defendants present, with counsel.

After argument, Leob and Boschart are discharged. Perkins and Hertz held to answer at next term of court; bail fixed at \$1,000 each. Bail entered.

Before Commissioner Heazlett.

No. 3.—United States *vs.* William J. Bucknall, charged on oath of *William Budd* with violation of neutrality laws.

March 30. Affidavit filed, and process exit.

March 31. Defendant held D. Sherwood surety in \$2,000 for hearing on Monday next at 10 o'clock.

April 2, 1855. Defendant present, with R. P. Kane, esq., as counsel, and held till Friday next for further hearing.

April 18, 1855. Defendant present; witness for government heard. Mr. Van Dyke moves that defendant be held to answer; R. P. Kane, esq., contra. Defendant held in the sum of \$1,000 to answer at the next term of the court.

No. 4. United States *vs.* a person by description, charged with enlisting and hiring others to enlist.

April 2, 1855. Affidavit filed; process exit.

No. 5. United States *vs.* Baron Vanschwatzenhorn and Emanuel Schumunski, charged with enlisting men for the service of Great Britain.

June 1, 1855. Affidavit filed of J. A. Weidenbourned, and process issued.

June 2. Return C. C. Defendants present. The following witnesses examined, viz: Theo. Theiner, Wm. Krample, John Heaich, Simon Rosenbaund, Herman Tappert, Edward Golzken, William Winter.

Defendants held in \$500 to appear at next court United States. On motion of the district attorney, the following witnesses are committed in default of bail: T. Theoner, H. Tappat, Ed. Gotzgen, Heaich, Winter, and Rosenbaum.

ATTORNEY GENERAL'S OFFICE,
December 8, 1855.

SIR: I am directed by the President to request you to report, for his information, a list of all the criminal complaints entered in your district against persons accused of recruiting for the service of Great Britain, giving the names of the parties, and the time of each alleged act.

I am, very respectfully,

C. CUSHING.

HUGH J. JEWETT, Esq.,
U. S. Attorney for Southern District of Ohio.

UNITED STATES ATTORNEY'S OFFICE,
Zanesville, December 18, 1855.

SIR: I am in receipt of your favor of the 8th instant. The names of the parties charged by indictment, in the circuit court

for this district, for "recruiting for the service of Great Britain," are: 1st, Charles Rowcroft; 2d, William Hamilton; 3d, Robert B. McKay; 4th, John Turnbull; 5th, Daniel DeCorponay. Complaint was made against one Frederick Pashuer, but no indictment found.

About the 1st July last the marshal and his assistants were advised that the above named parties were violating the neutrality laws, by hiring persons to go beyond the jurisdiction of the United States with intent to enlist in the service of Great Britain, and that about the 7th of July such hired persons would be started for Canada.

On the morning of the day that the hired parties were to be dispatched, and after they were seated in the cars, they, with the above named parties, were arrested.

On the 14th July a hearing was had before one of the commissioners of the United States, when the above named parties, with the exception of DeCorponay and the man named Pashuer, were recognized to appear and answer the charge at the ensuing October term of the circuit court, at which term indictments were found as before mentioned, and the cases continued for trial at the next (April) term of said court.

Very respectfully, your obedient servant,

H. J. JEWETT,
District Attorney.

Hon. CALEB CUSHING, *Attorney General.*

ATTORNEY GENERAL'S OFFICE,
January 10, 1856.

SIR: I have the honor to acknowledge the reception of your report of the 18th ultimo, respecting violations of the laws of the United States by agents of Great Britain within your district, and to say that what you have done in the premises is approved by the President.

I am, very respectfully,

C. CUSHING.

HUGH J. JEWETT, Esq.,
Attorney United States for Southern District of Ohio.

ATTORNEY GENERAL'S OFFICE,
December 8, 1855.

SIR: I am directed by the President to request you to communicate, for his information, a brief report of all the legal proceedings had in your district to repress or punish military recruiting for the service of Great Britain, including, especially, a list of persons indicted, with a statement in each case of the time of the alleged acts.

I have the honor to be, very respectfully,

C. CUSHING.

Hon. BENJAMIN F. HALLETT,
United States Attorney, Boston.

OFFICE OF U. S. ATTORNEY,
Boston, December 24, 1855.

SIR: I have the honor to comply with your request, made by direction of the President, to communicate for his information a report of the legal proceedings had in this district to redress or punish military recruiting for the service of Great Britain, including a list of the persons indicted, &c.

In May last I received information that persons, apparently foreigners, were being sent by steamers and packet-vessels from Boston to Halifax, whose passages were paid at this place. I had communication with the collector, General Peaslee, who concurred with me in refusing passenger manifests when the purpose of such shipments was suspicious. Mr. S. S. Lewis, the agent of the Cunard line, acted very promptly upon my suggestions, and refused applications made to him from New York to take passengers of this description, and receive their passage money on landing them at Halifax. I also received, anonymously, a printed copy of the handbill issued from the office of the provincial secretary at Halifax, March 15, 1855, inviting shipmasters to bring poor men, who were willing to serve her Majesty, and promising the cost of passage for each man shipped from Philadelphia, New York, and Boston, signed Lewis M. Wilkins. The same bill or proclamation is printed in the trial of Henry Hertz, page 15. Satisfied that Boston was being made a depot for the shipment of men designed for enlistment at Halifax, in evasion and violation of the neutrality acts, I caused the following arrests to be made:

June 6, 1855.—Charles Green and five other laboring men. Philip Kaufmann, an agent in bringing men from New York, to be forwarded to Halifax.

June 8.—John M. Schwarrer, who kept a German hotel in Boston, and boarded the intended recruits.

June 9.—Louis Celegi, another agent from New York, Dr. Keilbach and Gastinson, Germans, were arrested.

June 19.—In consequence of disclosures by some of the above parties, who voluntarily became witnesses, a warrant was issued against C. H. Stanley, of the consular office at New York, in order to retain the witnesses against him, who were sent to New York to Mr. MeKeon, under the statute for that purpose.

June 23 and 25.—Farley, alias Grant, and Caleb Stewart, were arrested.

June 28.—Upon information from the collector at Edgartown, (Mr. Norton,) and by the energetic action of Capt. Clark, of the revenue-cutter "James Campbell," I caused the arrest by the marshal, on board the British brig "Buffalo," of four persons, appearing to be officers, viz: Louis Kazinski, a Pole, calling himself *Count*; Hugo Lippi, a German; Richard Rudelins, an Italian; and H. Langlois, a French surgeon, together with 21 men under their control, bound to Halifax. By my request, Capt. Clark brought these persons to Boston in his cutter, under arrest of the marshal, from Tarpaulin cove, where they were found.

All the above persons, forty in number, (except Mr. Stanley,) were

brought before Mr. Commissioner Woodbury, and their cases respectively investigated. Philip Kauffman, Louis Celegi, Schwarrer, Kazinski, Hugo Lippi, Rudelius, and Langlois, were held before the grand jury, and the other persons retained as witnesses or discharged. The grand jury found bills against all except Kauffman and Schwarrer, who became witnesses.

These examinations distinctly proved a concerted arrangement between the colonial officers at Halifax and the British vice-consul at New York, to procure men in the United States, and ship them from Boston to go to Halifax, there to enlist in the foreign legion. Most of the men were deceived by promises of work on railroads or docks at Halifax, or other false pretences of employment. The agents who enticed the men were instructed in most cases, so as to evade the laws.

Kauffman was employed at New York to bring men on to Boston by Count Kazinski, who, as is now proved, was under the orders and pay of Mr. Stanley at New York, and was promised a colonel's commission in the foreign legion. Kauffman and Celegi brought to Boston at different times fifty men, who were shipped to Halifax. The packets of Clark, Jones & Co., and of Sprague, Soulé & Co., of Boston, transported large numbers of men, whose passages were paid through Mr. Howe, formerly colonial secretary. Mr. A. Winsor, who received passage money of Hertz at Philadelphia, March 25, was a member of the last named firm, and testified that he also received passage money in Boston, and forwarded men who were sent to Boston from New York by Max F. O. Strobel. Sixty men were shipped in Sprague, Soulé & Co.'s vessels, who were forwarded by Strobel; and, at another time, thirty men were dispatched in the bark Halifax, belonging to Clark, Jones & Co. These ship-owners and their agents here, though grossly violating the spirit of the law, could not be brought under its provisions of hiring and retaining. They desisted, however, promptly and honorably, after the disclosures made before the commissioner and grand jury in the investigations. It was also proved that Mr. Howe, the colonial agent, had been three several times in Boston, contracting for the passages of recruits, boarding and selecting men and paying money to agents engaged in procuring them; but he could not be found after these disclosures to be arrested. Mr. Edward Whitney, of the firm of Sprague, Soulé & Co., testified that Howe advanced to him \$192 for passages, and that he, Howe, told Whitney that he had taken legal advice, and that it was lawful to ship the men to Halifax. A person named Jacoby procured at New York and brought to Boston a number of squads of men under the pretence that they were to enlist in the United States service. I never found but four men—three Frenchmen and one German—who admitted they intended to enlist as soldiers, and they were hired in New York. All the others declared they had been deceived, though many of them had previously stated their intention to enlist.

Two men, George Hashren and John Hock, had been to Halifax to enlist, and were there rejected for physical defects, and sent back to Boston. Their testimony proved that the recruits sent from Boston were expected, and were received by the lieutenant governor of Nova

Scotia and the officers of the foreign legion, and were examined and enlisted.

In the district court of the United States, before Judge Sprague and a jury, from July 16th to the 21st, 1855, I tried the indictments found against Louis Kazinski and the three other officers, viz: Hugo Lippi, Rudelius, and Langlois, arrested on board the British brig Buffalo. The defendants were acquitted under the ruling of the judge, that there was not sufficient evidence of a hiring and a retaining of the men in this district, with their consent and concurrence in this district, to go to Halifax, there to enlist as soldiers. It was fully proved that Count Kazinski had the control of the men on board the brig Buffalo; that he forcibly retained and refused to land some of them, who begged for their discharge; that he declared he had telegraphed to Halifax the number of men he had in the brig Buffalo, and must report them all at Halifax, and if the British officers there would release them after they got to Halifax, they would be sent back. But the consent of the men to be hired or to enlist while in the district of Massachusetts could not be proved.

The facts disclosed gross deception practised upon the men by the British officers and agents concerned, and an elaborate combination to evade the neutrality laws, and yet secure the men at Halifax.

Another indictment against Louis Celegi was also tried with the same result. But the effect of these proceedings and trials, and of the vigilance instituted to detect further attempts to evade the laws, was to break them up entirely in this city.

Subsequently, on the 9th of August, 1855, I caused the arrest of Joseph Wagner, and, upon his examination, sufficient evidence was obtained to implicate him in an actual hiring of men at New York. I accordingly caused Wagner and the witnesses to be removed to New York by the marshal, where he was proceeded against by Mr. McKeon, and he was tried and found guilty.

In the meantime I communicated to the United States attorneys, Mr. McKeon, of New York, and Mr. Van Dyke, of Philadelphia, all the information drawn out by the examinations here of the violations of the laws in those cities. On the 22d of June, 1855, I communicated to the Hon. Secretary of State, Mr. Marcy, the substance of the proceedings here.

* * * * *

The counsel who defended Louis Kazinski and his associates in the trials here (Messrs. Andrew and Burt) were retained and paid a \$500 fee by Mr. Stanley, of the British consulate at New York. Kazinski himself, who has recently been in Boston, has verified this statement to me; and also that, at the time he took charge of the brig Buffalo, he held the written instructions of Mr. Stanley, and had the control of the vessel.

* * * * *

I instituted the above proceedings without any direct instructions to that effect, but as within my duties as a prosecuting officer, and in the confidence that the President, as all his acts before and since have demonstrated, was earnestly desirous to maintain the good faith of the United States by a strict and impartial enforcement, in all cases,

of the neutrality laws ; and I trust that my endeavors to enforce an observance of those laws in this district have met his approbation and that of the Attorney General.

Very respectfully, your obedient servant,

B. F. HALLETT,

United States Attorney.

Hon. C. CUSHING,

Attorney General.

ATTORNEY GENERAL'S OFFICE,

January 17, 1856.

SIR : I am directed by the President, in acknowledging the reception of your communication of the 24th ultimo, to signify his entire satisfaction with all the steps taken by you in regard to enlistments for the military service of Great Britain within your district.

I am, very respectfully,

C. CUSHING.

BENJ. F. HALLETT, Esq.,

Attorney U. S., District of Massachusetts.

THE TRIAL OF HENRY HERTZ ET AL.

DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES OF AMERICA vs. HENRY HERTZ AND EMANUEL C. PERKINS,

Charged with hiring and retaining persons to go beyond the jurisdiction of the United States, with the intent to enlist in the British foreign legion for the Crimea.

SEPTEMBER 21, 1855.—Before the Honorable JOHN K. KANE.

The defendants were arraigned on several bills of indictment, to which they severally pleaded *not guilty*.

A jury is called, and sworn or affirmed as follows:

1. Jeremiah Byerly, carpenter, Front street, below Catharine, Philadelphia.
2. John Baird, marble mason, Spring Garden street, above 13th, Philadelphia.
3. Joshua Fry, gentleman, Centre P. O., Lehigh county, Penn.
4. John G. Hinsell, collector, Crown street, above Vine, Philadelphia.
5. Michael D. Kelly, tailor, Division street, below 12th, Philadelphia.
6. Cornelius McCauley, manufacturer, No. 119 Lombard street, Philadelphia.
7. John F. Parke, farmer, Radnor P. O., Delaware county, Penn.
8. George Reese, gentleman, Race street, above 3d, Philadelphia.
9. John Stewart, farmer, Carlisle, Cumberland county, Penn.
10. John Wilbank, innkeeper, Rugan street, above Callowhill street, Philadelphia.
11. Joseph Lippencott, carpenter, Vernon street, above 10th, Philadelphia.
12. Charles R. Able, manufacturer, No. 478 North Fourth street, Philadelphia.

The indictments were similar in their character, and related to the hiring of different persons.

The following is a copy of one of the indictments :

In the District Court of the United States in and for the Eastern District of Pennsylvania, of May sessions, in the year of our Lord one thousand eight hundred and fifty-five.

EASTERN DISTRICT OF PENNSYLVANIA, ss :

First count.—The grand inquest of the United States of America, inquiring for the eastern district of Pennsylvania, upon their oaths and affirmations respectively, do present: That Henry Hertz, late of

the district aforesaid, yeoman, and Emanuel C. Perkins, late of the district aforesaid, yeoman, heretofore, to wit: on the twentieth day of February, in the year of our Lord one thousand eight hundred and fifty-five, in the district aforesaid, and within the jurisdiction of this court, with force and arms, did hire and retain one William Budd to enlist himself as a soldier, in the service of a foreign prince, state, colony, district, and people, contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States.

Second count.—The grand inquest of the United States of America, inquiring for the eastern district of Pennsylvania, upon their oaths and affirmations respectively, do further present: That Henry Hertz, late of the district aforesaid, yeoman, and Emanuel C. Perkins, late of the district aforesaid, yeoman, heretofore, to wit: on the twentieth day of February, in the year of our Lord one thousand eight hundred and fifty-five, at the district aforesaid, and within the territory and jurisdiction of the United States and of this honorable court, with force and arms, did hire and retain William Budd to enlist and enter himself as a soldier in the service of a foreign prince, state, colony, district, and people, to wit: the service of her Most Gracious Majesty, the Queen of Great Britain and Ireland, contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

Third count.—The grand inquest of the United States of America, inquiring for the eastern district of Pennsylvania, upon their oaths and affirmations respectively, do further present: That Henry Hertz, late of the district aforesaid, yeoman, and Emanuel C. Perkins, late of the district aforesaid, yeoman, heretofore, to wit: on the twentieth day of February, in the year of our Lord one thousand eight hundred and fifty-five, at the district aforesaid, within the territory and jurisdiction of the United States, and within the jurisdiction of this court, with force and arms, did hire and retain William Budd to go beyond the limits and jurisdiction of the United States, with the intent of him, the said William Budd, to be enlisted and entered as a soldier in the service of a foreign prince, state, colony, district, and people, contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

Fourth count.—The grand inquest of the United States of America, inquiring for the eastern district of Pennsylvania, upon their oaths and affirmations respectively, do further present: That Henry Hertz, late of said district, yeoman, and Emanuel C. Perkins, late of the district aforesaid, yeoman, heretofore, to wit: on the twentieth day of February, in the year of our Lord one thousand eight hundred and fifty-five, at the district aforesaid, and within the territory and jurisdiction of the United States, and within the jurisdiction of this honorable court, with force and arms, did hire and retain William Budd to go beyond the limits and jurisdiction of the United States, with the intent of him, the said William Budd, to be enlisted and entered as a soldier in the service of a foreign prince, state, colony, district, and people, to wit: the service of her Most Gracious Majesty, the Queen of

Great Britain and Ireland, contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

Fifth count.—The grand inquest of the United States of America, inquiring for the eastern district of Pennsylvania, upon their oaths and affirmations respectively, do further present: That Henry Hertz, late of said district, yeoman, and Emanuel C. Perkins, late of the district aforesaid, yeoman, heretofore, to wit: on the twentieth day of February, in the year of our Lord one thousand eight hundred and fifty-five, at the district aforesaid, within the territory and jurisdiction of the United States, and within the jurisdiction of this court, with force and arms, did hire and retain William Budd to go beyond the limits and jurisdiction of the United States, with the intent of him, the said William Budd, to be enlisted and entered as a soldier, in the service of a foreign prince, state, colony, district, and people. The said Henry Hertz and Emanuel C. Perkins, at the time they so hired and retained the said William Budd to go beyond the limits and jurisdiction of the United States, with the intent as aforesaid, not being a subject or citizen of any foreign prince, state, colony, district, or people, transiently within the United States, and said hiring and retaining not being on board any vessel of war, letter of marque, or privateer, which at the time of the arrival within the United States of such vessel of war, letter of marque, or privateer was fitted and equipped as such; and the said William Budd, so hired and retained, not being a subject or citizen of the same foreign prince, state, colony, district and people, transiently within the United States, enlisting and entering himself to serve such foreign prince, state, colony, district, or people, on board such vessel of war, letter of marque, or privateer, the United States being at peace with such foreign prince, state, colony, district, and people, contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

Sixth count.—The grand inquest of the United States of America, inquiring for the eastern district of Pennsylvania, upon their oaths and affirmations, do present: That Henry Hertz, late of said district, yeoman, and Emanuel C. Perkins, late of the district aforesaid, yeoman, heretofore, to wit: on the twentieth day of February, in the year of our Lord one thousand eight hundred and fifty-five, at the district aforesaid, and within the territory and jurisdiction of the United States, and within the jurisdiction of this honorable court, with force and arms, did hire and retain William Budd to go beyond the limits and jurisdiction of the United States, with intent of him, the said William Budd, to be enlisted and entered as a soldier in the service of a foreign prince, state, colony, district, and people, to wit: in the service of her Most Gracious Majesty, the Queen of Great Britain and Ireland. The said Henry Hertz and Emanuel C. Perkins, at the time they so hired and retained the said William Budd to go beyond the limits and jurisdiction of the United States, with the intent as aforesaid, not being a subject or citizen of the said Queen of Great Britain, transiently within the United States, and said hiring and retaining not being on board any vessel of war, letter of marque, or privateer,

which at the time of its arrival within the United States was fitted and equipped as such ; and the said William Budd, so hired and retained, not being a subject or citizen of her Most Gracious Majesty, the Queen of Great Britain and Ireland, transiently within the United States, enlisting and entering himself to serve the said Queen of Great Britain, on board such vessel of war, letter of marque, or privateer, the United States being at peace with the said her Most Gracious Majesty, the Queen of Great Britain and Ireland, contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

JAMES C. VAN DYKE,
Attorney for the United States
for the Eastern District of Pennsylvania.

J. C. Van Dyke, esq., attorney for the United States, opened the case on the part of the prosecution, in substance as follows:

May it please the court—gentlemen of the jury: It is a fact which will be judicially noticed by this court and jury, that during the year 1855, as for some time previous, the Crimea has been the site of a sanguinary and melancholy conflict between some of the most powerful nations of the globe.

That conflict has been conducted principally by the British, French and Turks on one side, and by Russia on the other, and has become part of the political and legal history of nations.

It is not important for us to inquire into the cause of this conflict, nor is it necessary for us to trace the various military or political manœuvres by which it has been conducted, much less to endeavor to ascertain or speculate as to the probable result of an attack on the part of the allies, producing those misfortunes to the British government which they have endeavored to retrieve by a violation of law in this country.

We do not deem it in any degree important to the American people that the combined forces of southern Europe should be successful against a single nation of the north in maintaining her asserted rights. In this free and republican country, the home ordained by Providence for the oppressed of all nations, we have very little to do with the struggle for supremacy and power by the different crowned heads of the Old World. The various schemes which have been adopted for the support of a balance of power by the potentates of Europe never have, and in my opinion never will advance those republican institutions which it is our pleasure and duty to foster. On the contrary, those combinations which have been formed in support of such balance have at all times been made the instrument of retarding in Europe the progressive democratic spirit of the age, and of binding the masses more firmly beneath the yoke of an overgrown and decaying aristocracy ; and although the popular pulse in this country is manifestly against all war which originates in the desire to perpetuate or extend any other than a republican form of government, yet a proper regard for our national integrity forbids us to tolerate, on the part of those residing among us, any intermeddling in the disputes of other nations, where those disputes do not interfere with or concern the le-

gitimate objects and manifest destiny of our own wide-spreading institutions. Except in such cases, our policy is peace; and we should endeavor to keep ourselves free from all political connexions which might in any way involve us in the conflict among European powers—not so much for the reason that we are not ever ready to defend our rights by an effectual resort to arms, but because our implied and treaty obligations require us firmly and faithfully to maintain an impartial neutrality.

By prudence and an entire good faith in observing the position of an independent neutral nation, we increase our own happiness and prosperity at home, and secure to ourselves the right to demand a proper respect abroad.

A neutral nation cannot with propriety interfere with any matter of dispute between foreign belligerent parties, nor can it furnish aid to either, without justly incurring the danger of the displeasure of the other. The propriety of a nation not directly involved in an existing war, in maintaining this position of strict impartiality, is manifest. It is protection and preservation both to our citizens and to our property.

This has been the doctrine of all neutral powers; and although for centuries disregarded by European governments, in violation not only of the well settled laws of nations, but also of highly penal statutes, it has ever been regarded by American statesmen as a cardinal element in American diplomacy.

The benefits of a strict observance of neutrality are too great and too many to be enumerated in the trial of the issue which I am about to present to you. Suffice it to remark, that so great are those benefits, that from the beginning of our government we have considered it the duty of every resident in this country, whether minister plenipotentiary, consul, or private citizen, to inquire into the character and extent of our laws upon this subject, and carefully to observe them.

No one residing here has a right to violate the national sovereignty of the United States, by setting those laws at defiance, by the perpetration of acts derogatory to our character as an independent, impartial, neutral nation; and any neglect of this duty renders him amenable to the laws of the land. As an example of the early feeling of our government upon this subject, Mr. V. read the proclamation of President Washington, in 1793, in relation to “the war then existing between Austria, Prussia, Sardinia, Great Britain, and the Netherlands, on the one part, and France on the other; stating that the duty and interest of the United States require that they should, with sincerity and good faith, adopt and pursue a conduct friendly and impartial towards the belligerent powers.

“I have, therefore, thought fit, by these presents, to declare the disposition of the United States to observe the conduct aforesaid towards those powers respectively, and to exhort and to warn the citizens of the United States carefully to avoid all acts and proceedings whatsoever, which may tend in any manner to contravene such disposition.

“And I do, hereby, also make known, that whosoever of the citizens of the United States shall render himself liable to punishment or forfeiture, by the laws of nations, by combatting, aiding, or abetting

hostilities against any of the said powers, or by carrying to any of them those articles which are deemed contraband by the modern usage of nations, will not receive the protection of the United States against such punishment or forfeiture; and further, that I have given instructions to those officers to whom it belongs, to cause prosecutions to be instituted against all such persons who shall, within the cognizance of the courts of the United States, violate the laws of nations, with respect to the powers at war, or any of them."

The justice of the principles contained and proclaimed in this message no doubt produced, in 1794, the passage of the first law for the protection of our neutrality.

That act is the same, in its principal features, as the English statute 9 Geo. II, ch. 30, sec. 2; and 29, ch. 17, sec. 2.

Mr. Van Dyke then referred to the various acts of Congress which had at different times been enacted for the purpose of imposing punishment upon those who should violate the national sovereignty of the United States by interfering with the rights of belligerents.

The act of June 5, 1794, ch. 50, punishes any citizens of the United States for accepting and exercising a commission to serve in any war, on land or at sea, in the service of any foreign prince or state; and prohibits any person, within the territory or jurisdiction of the United States, enlisting or entering himself, or hiring or retaining another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with the intent to be enlisted or entered in the service of any foreign prince or state as a soldier, or as a mariner, or seamen, on board any vessel of war, letter of marque, or privateer; and forbids the fitting out, or attempting the fitting out of ships-of-war within any of the waters of the United States, or procuring the same to be done. This act also forbids any person, within the territory of the United States, increasing or augmenting, or procuring the increase or augmentation, or knowingly being concerned therein, of the force of any ship-of-war, cruiser, or other armed vessel of any foreign prince or state, or belonging to the subject of any foreign prince or state, the same being at war with any other foreign prince or state with whom the United States are at peace.

Sec. 5 prohibits all persons, within the territory or jurisdiction of the United States, to begin or set on foot, or provide or prepare the means for any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state with whom the United States are at peace.

Sec. 6 makes the offence indictable in the district court of the United States.

Sec. 7 authorizes the President of the United States to employ the armed forces of the United States to prevent the commission of the offences declared against by the neutrality laws of the United States.

Sec. 8 authorizes the President to use the armed forces of the United States to compel the departure of any armed ship of any foreign prince, in all cases in which, by the laws of nations or the treaties of the United States, they ought not to remain in the United States.

This act was to continue in force for two years, or until the next

Congress thereafter. In 1797 the act was further extended for the period of two years.

On the 24th April, 1800, Congress, by an enactment, made the act of 1794 perpetual.

The next enactment was March 3, 1817, ch. 58, by which new punishment and penalties were imposed for a violation of the provisions of the act of 1794.

Mr. V. said he referred only to the substance of these acts of Congress, without delaying the court to read from the books, because, having been repealed by the law under which the present bills of indictment are framed, they are important for two reasons only.

1. They show in a most conclusive manner the policy of our government in maintaining a strict neutrality on the international affairs of European powers.

"Peace with all nations, entangling alliances with none," has ever been the motto, not only of the government, but of the people of this country.

By adopting and strictly observing this just and fair policy, the United States has in times of intense political excitement, and bloody and disastrous warfare in other countries, cultivated peace with all nations, and secured at all times national repose and commercial prosperity at home, and respect abroad. By fulfilling, with a strict impartiality, our neutral responsibilities towards belligerent powers, we have in times past avoided the disasters which have befallen other free governments; and by continuing so to do in the future, we will continue able to present to mankind an example of republican integrity worthy of imitation by the civilized world.

2. They are important: because, from their peculiar similarity with the act of 1818, under which these defendants, now on trial, are indicted, we are enabled more fully to comprehend the meaning of the several judicial constructions which have been given to them, especially in cases of prize, and to ascertain the bearing of such construction upon the act of 1818.

In 1818 the Congress of the United States felt the importance of remodelling the law upon the subject of American interference in disputes between foreign nations, and in an act passed on 20th April, which repeals all former laws upon the subject, adopted a most wholesome law, which, though varying somewhat from former enactments, is the same in all essential points. Mr. Van Dyke referred to this act at length.

The defendants are indicted under the provisions of the second section of this act. The grand jury have found several bills of indictment against them for the various violations of this law, which seemed to them susceptible of the most easy proof.

It will be observed that the crime mentioned in this section consists in the doing of various acts. You will be instructed by the court that you must be satisfied of certain propositions which it will be my duty to submit to your consideration.

First. It will be necessary for the government to satisfy you that the act complained of was committed within the territory of the United States.

Second. That the defendants, or either of them, enlisted or entered himself, respectively, in the service of a foreign prince, state, colony, district or people, as a soldier, or as a mariner or seaman on board any vessel of war, letter of marque, or privateer.

Third. That the defendants, or either of them, hired or retained another person to enlist or enter himself in such service

Fourth. That the defendants, or either of them, hired or retained another person to go beyond the limits or jurisdiction of the United States, with the intent to be enlisted or entered in such service.

Upon the first point I remark: that if from the evidence you are satisfied that the acts complained of were not committed within the limits of the United States, and also within the limits of the jurisdiction of this court, which is bounded by those counties forming the eastern district of Pennsylvania, it will be your duty to acquit both the defendants on all the bills now laid before you.

Upon this point, however, gentlemen, I think you will have no trouble. The evidence will be conclusive that whatever was done by the defendants was done within the eastern district of Pennsylvania.

Upon the second point you are relieved from any inquiry, there being no charge in the indictments that the defendants, or either of them, enlisted himself in any foreign service.

Having found, however, the first point in favor of the government, your investigations will be directed to the third and fourth points of inquiry, viz: Did the defendants, or either of them, at the various times specified in the various bills under consideration, hire or retain any or all of the persons mentioned to be enlisted or entered in a foreign service; or did they hire or retain any or all of the persons mentioned in these bills to go beyond the limits of the United States, with the intent to be enlisted or entered in such foreign service? If either, or both, then you will find them, or either of them, guilty on such counts in the indictments as are applicable to the facts upon which you base your conclusions.

The court, I am of opinion, will inform you that the intent mentioned in the act refers to the intention of the party, enlisted, hired, or retained. Not that such an intent must be an absolute determination to enlist when arriving beyond the limits of the United States; but the crime charged against the defendants being the hiring of some other persons, which other persons must have the intent, it is sufficient ground for conviction, if, from all the testimony, you are satisfied that the defendants, at the time they so hired or retained any other person, believed it to be the bona-fide intention of the person so hired or retained to enlist or enter such foreign service when he should arrive beyond the limits of the United States. Upon this point, however, gentlemen, you will have no difficulty upon many of the bills, as I shall be able to prove to your entire satisfaction—first, that the defendant Hertz thought the recruit had such intention; and secondly, that the recruit did, in fact, agree to depart from our jurisdiction with intent to enlist.

Having thus briefly reviewed the political policy of our government, and the law applicable to the present prosecution, permit me to call your attention to the facts as I shall be able to present them to your

serious consideration. So far as applicable to the prosecution, they are easily understood.

I have said that the war in the Crimea was conducted by the British, French, and other nations, as allies, against the single power of Russia. I have said that the consequences of that war had been disastrous to the besieging parties, and that the signs of the times indicated a still more humiliating fate. The English army having met the most serious losses, the government of Great Britain, in direct violation of her duty towards us, and with a design of misleading those residents of the United States who did not fully comprehend the nature of our laws, devised a plan for the purpose of partially regaining the position and standing which, in the absence of the proper exercise of the advanced military experience of the age, they had lost.

A plan for this purpose was adopted and attempted to be carried out, by his excellency, John F. Crampton, the minister plenipotentiary of her Majesty, assisted by several agents of the British government, within the territory and jurisdiction of the United States; and I think you will be satisfied that Mr. Crampton thus acted with the knowledge and approbation of his government. This high functionary of that government made contracts and agreements with certain persons, known in this country as able and efficient officers in the various conflicts which have recently taken place on the continent of Europe. The parties thus contracted with were to commence a system of recruiting men within our territorial limits.

There will be examined before you two or three individuals who were engaged in carrying out this plan, and who on various occasions had interviews with Mr. Crampton, and with him adjusted and perfected the programme for this enlistment. Mr. Howe, Sir Gaspard le Marchant, governor of Nova Scotia, Mr. Wilkins, his secretary, Mr. Barclay, the British consul at New York, and other British representatives in power, also assisted in and directed this flagrant violation of our law.

In the perfecting of this general design, Mr. Howe came to Philadelphia, and endeavored to make an arrangement with Colonel Rumberg, well known here for many years as one of the publishers of the *German Democrat*, and now known as one of the editors of the *German Adopted American*, published in Philadelphia and Pottsville. Mr. Howe brought to this gentleman a proclamation, which will be submitted to you, calling for enlistments within the United States to serve in the foreign legion, then forming at Halifax. Colonel Rumberg was at first pleased with the proposition, and felt disposed to lend his aid in its furtherance; but afterwards, upon being informed that such enlistments were a violation of the laws of the United States, and that he might get into difficulties, he abandoned it. He however translated the proclamation for Mr. Howe, and, having met Mr. Hertz and Mr. Howe together at Jones' Hotel, he published the proclamation in his paper for Mr. Hertz.

Arrangements were made by Mr. Howe and Mr. Crampton with the defendant Hertz, who, for them, undertook the enlistment of men at his office, which he opened for that purpose, at 68 South Third

street. Mr. Hertz published and paid for the proclamation for these recruits in various newspapers. That proclamation was signed by Lewis M. Wilkins, secretary of the provincial government of Nova Scotia, and calls upon person to enlist in the foreign legion.

While this matter was going on, Captain Strobel was either sent for by Mr. Crampton, or came himself to him—I do not recollect which—and entered into negotiations with him for carrying on this business. Mr. Crampton told Strobel that he had written to his home government for the purpose of learning what arrangements should be made in this country for enlisting soldiers, and had not yet received a reply; but as soon as he received it he would let him know. A short time afterwards he wrote him a note, informing him that he had received the reply, and was prepared to enter into the proper arrangements for carrying on the enlistment. They met together, and Mr. Strobel prepared for him a plan which he had devised for the purpose of recruiting men in the United States, and taking them beyond our borders to serve in the “legion.” The plan, with some alterations, was adopted by Mr. Crampton, and Mr. Strobel was sent through the large cities of the United States to establish various recruiting offices. I give the most prominent facts, merely running over them as briefly as possible. After having first gone to New York, he came to Philadelphia and met Mr. Hertz, who was then engaged enlisting men in this city, and who had a number already enlisted. Mr. Hertz had, up to the 24th of March, one hundred men, whom Mr. Strobel was to take to Halifax; and on the 25th of March they sailed in the steamer Delaware bound for that place. These men were enlisted at Hertz’s office, No. 68 South Third street, whither the advertisements had called them. Mr. Strobel saw them there enlisted, and to a certain extent assisted in enlisting them; and on Sunday, the 25th of March, he sailed in the steamer Delaware with about seventy-five men, the rest having deserted between the time of hiring or engagement and the time of sailing. These men were taken to Halifax by Captain Strobel, and there examined and attested; were placed in the barracks, and a short time afterwards sailed for Portsmouth, England. On the following Wednesday Mr. Hertz had made an arrangement to send another company of recruits from the United States, in charge of a person named William Budd, a very intelligent and good officer, whom he had also engaged to go beyond the limits of the United States, with the intent of entering into the British service. The officers of the United States having learned that this recruiting was going on, devised, in pursuance of directions from the administration at Washington, the means for stopping it; and after Mr. Budd, with his company, had embarked from Pine street, on board the steamer Sanford, being furnished by Mr. Hertz with free tickets for a passage to New York, where they were to get others from Mr. Howe to take them the rest of the journey, and had progressed as far as the navy yard, the U. S. marshal having a warrant, went on board and arrested the whole company and brought them to Philadelphia, where the parties who had assisted them, together with the papers in their office were taken in charge.

That Mr. Hertz was engaged in wilfully violating the law is proved

by several circumstances connected with the case. He had the proclamation, in the shape of a handbill, printed and posted in the streets of Philadelphia, and paid for publishing the proclamation in the *Ledger* and *Pennsylvanian*. He took an advertisement to the *German Democrat*, which called for recruits for the foreign legion, and had an office opened, and individuals there to assist him in taking down the names of those who applied, and examining them to see if they would be received. He there told them that they would get thirty dollars bounty and eight dollars a month, and also stated that various persons would receive commissions. He also gave them tickets for their passage to New York, some of which tickets were taken from those arrested, and will be produced. During the whole of his enlistment, the defendant Hertz was actively engaged in procuring men for that purpose.

Arrests having been made in all parts of the United States, of persons engaged in this business, the representatives of her Majesty in this country became somewhat alarmed as to the results. Mr. Crampton then made arrangements with Mr. Strobel and one Dr. Ruess, who met him at Halifax, and devised plans as to the manner in which the recruiting was thereafter to be conducted in the United States; and on the 15th of May, or thereabouts, the whole programme of proceedings was changed by his excellency the British minister and Sir Gaspard le Marchant, governor of Nova Scotia. They then devised a new plan of violating the national sovereignty of the United States, and of evading our laws enforcing neutrality—not a very praiseworthy occupation within the borders of a friendly government, for the dignified representative of the self-styled mistress of the seas; but it was an occupation which, if permitted by our people, might have destroyed the most amicable and friendly relations which exist, and which I trust may ever continue, between the United States and the Russian government. Mr. Crampton and his associate representatives of Great Britain on this continent gave directions to Captain Strobel to repair immediately to all the recruiting offices in the United States, and order the persons engaged in those offices to adopt the system which they had prepared for the guidance of the recruiting agents; giving to these agents at the same time a caution, that should they be unsuccessful in evading the laws and alluding the authorities of the United States, they could hope for no protection from the British government; that is, the British government was willing to accept the advantage of the successful criminal conduct of all their minister and his recruiting agents, but refuse to defend or assist those agents if they should be so unfortunate as to be detected. Honorable and generous Great Britain! and oh! most faithful British Ministers!!

The ruse then adopted was to send men to Canada and Halifax, under the pretence of engaging them on the railroad, and when there to enlist them in the army. For the purpose of carrying out this object, regular written instructions were given by Mr. Crampton to Mr. Strobel, who, with Dr. Ruess and other officers, started in company with Mr. Crampton to the United States. Some of these officers afterwards left the service of her Majesty, and, as was their duty, have

since expressed their willingness to disclose all their knowledge in support of the prosecutions which have been commenced.

The active connexion and co-operation of nearly all the representatives of her Majesty in this general design, will be made clear to you by unimpeached testimony. I think I can say with confidence that his excellency John F. Crampton, minister extraordinary. &c., his excellency Sir Gaspard le Marchant, governor of Nova Scotia, his excellency Sir Edmund Head, governor of Canada, Sir Joseph Howe, Lewis M. Wilkins, provincial secretary of Nova Scotia, and at least one British consul, directed this course of conduct. All these gentlemen, it will be in evidence to you, have, with Mr. Hertz, the defendant, taken an active part in directing the commission of the crime charged ; and whether or not by a bold attempt to disguise their real object, is a matter of very little importance.

The oral testimony of the witnesses will, in some most material and important facts, be corroborated by written documents. I shall be able to produce to you some five or six original letters and notes of Mr. Crampton, and also the original instructions to the agents, as to the mode in which the enlistments were to be conducted in the United States. You will also have in evidence the original proclamation or advertisement in the handwriting of Sir Joseph Howe, inviting persons to enlist in the foreign legion, as well as several other letters and papers of considerable importance on the points in issue.

I take it, gentlemen, briefly to conclude what I have to say to you at this stage of the proceedings, that if I show that either or both of these defendants, in conformity with this general design of the British government, were engaged in thus enlisting, or hiring or retaining any person to be enlisted, I have made out a clear case. I am free to admit that the evidence against one of the defendants is not of the most conclusive character, he not being known as being positively engaged in enlisting, hiring, or retaining any particular person, although he was in talking and giving directions on the subject. The court will instruct you how far a person must go in order to commit this crime, and whether the fact of Perkins sending a man to Hertz, for Hertz to enlist him, constituted a crime on the part of Perkins.

I shall prove to you distinctly, by unimpeachable evidence, that all the persons mentioned in all these bills have been enlisted by the defendant Hertz, in the first place in the service of her Most Gracious Majesty the Queen of Great Britain, and, if not enlisted within the jurisdiction of the United States, that he has hired and retained each and every one of these individuals, and many more, to go beyond that jurisdiction, to wit : to Halifax, in Nova Scotia, for the purpose of being there enlisted in a foreign legion destined for the Crimea, to engage in the battles of the allies. If I prove these facts, I can safely ask at your hands a verdict against him for one of the most flagrant violations of the national sovereignty of this country which has ever been known to have been perpetrated within its borders. First, a violation of our law ; second, a violation of the confidence reposed in a high representative functionary ; and thirdly, a violation of the sympathies, and a national insult to the sentiments and the feeling of our people.

Max F. O. Strobel, sworn.

After the witness was sworn, Mr. Remak desired the district attorney to state distinctly what he intended to prove by him.

Mr. Van Dyke said he had no objection to doing so, but he thought it would occupy too much time.

Judge Kane said that he preferred that the witness should be examined in the first instance, without being distinctly apprized of all the facts about which he was to testify.

Examination by Mr. Van Dyke.

Q. Of what country are you?

A. I am from Bavaria.

Q. Have you been in military service?

A. Yes, sir, in the Bavarian service, in the artillery.

Q. Have you ever been in war?

A. Yes, sir, I have joined the revolutionists in Bavaria.

Q. In 1848?

A. During the revolution in the year 1849.

Q. How did you happen to leave the service?

A. Well, we were defeated, and obliged to leave Baden and go into Switzerland; then I stopped there, and travelled through France and England until 1851. On the 13th of May, 1851, I embarked at Havre and came to this country, and arrived here in June, 1851. On the 23d of June, 1851, I came to this country; I was in New York several weeks, and then went to Washington, and there got employment in the Coast Survey Office. I was there until 1853, when I went out with the expedition to Oregon, under Governor Stevens. I went up with him to Minnesota; I left his party out on the plains on Red river, and came back to Minnesota on the 7th of September, 1853, and came down to St. Louis, and started with Col. Fremont on his winter expedition to San Francisco about this great Pacific railroad; I have been assistant topographical engineer of Col. Fremont; I left San Francisco on the first of May, 1854; I crossed the isthmus and came back with our Indians, and brought them up to Kansas again. From there I went back to Washington city, where I finished the maps for the works of Col. Fremont, which I suppose are now before Congress.

Q. When did you finish the maps?

A. I finished them in the end of August, 1854. I then received a letter of recommendation from Mr. Benton to the different directors of railroads to secure me a position as engineer. I went with this recommendation or letter of introduction to Missouri. I took sick there, and was obliged to leave the valley of the Mississippi and come back to Washington city. When I came back to Washington I was engaged in the Pacific railroad office, at that time established in Washington, and was at work there until the first of February. In the end of January I saw Mr. Crampton, and received from Mr. Crampton the reply.

Q. State the whole conversation which took place between you and Crampton.

A. I received from Crampton the reply that he could not tell me

at that moment what could be done. I said to Crampton that I believed in this very time, as it was in the winter time.

Q. Last winter?

A. Yes, sir; that many people were out of work in New York and other places, and it would be very easy to raise men for this "foreign legion" that the English Parliament had agreed to establish. Crampton told me that he believed so himself, but at that moment he had no orders from the home government to do any thing in the matter, and that he would let me know as soon as he received any communication from home. A few days afterwards, I suppose on the 28th of February, I received a letter from Mr. Crampton.

Q. Is this the letter?

A. Yes, sir.

Q. And this the envelope in which it was enclosed?

A. Yes, sir.

The letter was here read in evidence as follows:

"WASHINGTON, *February 4, 1855.*

"SIR: With reference to our late conversation, I am now able to give you more precise information in regard to the subject to which it related. I remain, sir, your obedient servant,

"JOHN F. CRAMPTON.

"MR. MAX STROBEL."

After receiving this letter, I went to see Mr. Crampton the next morning; Mr. Crampton told me that he had received letters from home, and that he was willing now to raise men here in the jurisdiction of the United States for a British foreign legion, which should be established either in Nova Scotia or in Canada.

Q. Did he use the words "within the jurisdiction of the United States?"

A. Yes, within the jurisdiction of the United States.

Q. He used those precise words, did he?

A. Yes, sir; but he was not sure at that time whether the main depot should be at Halifax or in Canada, and he was obliged to make arrangements with the governor-general of Canada. At the very same time he gave me a letter of introduction to the British consul in New York, Mr. Barclay, in which he states that I am already acquainted with this matter, and that Mr. Barclay might receive me and talk with me about this subject, and that I should make preparations in New York for getting men. He told me at the very same time he would send a messenger to the governor-general of Canada. I went to New York and delivered my letter to Mr. Barclay.

Q. What was this messenger sent for?

A. To arrange matters about a depot or place where we could send these men whom we got here in the States. I was waiting in New York for the return of this messenger for several weeks. The messenger returned, and was sent again, and no understanding could be made between Sir Edmund Head and Mr. Crampton, (Head is governor-general of Canada;) because, during that time, the governor of

Nova Scotia had received orders from England to commence a new depot at Halifax, and to try and get men in the United States for this service.

Q. The arrangement was not made by the messenger sent to Canada to Sir Edmund Head, because he had received a letter from the governor of Nova Scotia, stating that he had received orders from England to make Halifax the depot?

A. Yes, sir. The reason for sending all the men to Halifax was the order that the governor of Nova Scotia received from England. During that time I went back to Philadelphia. It was on the 10th or 11th of March, 1855, when I came back to Philadelphia. I learned from a friend of mine—a certain Dr. Biell, who is now regimental surgeon in this foreign legion—that Mr. Hertz had received letters—one from England, another one from Mr. Crampton, though I do not know positively; I am not certain where it was from—and that he had spoken to this Dr. Biell, and told him he was able to procure him a commission in this foreign legion.

Q. In consequence of what Dr. Biell told you, state what you did?

A. I went to Hertz and had a conversation with Hertz about this matter.

Q. Where was he?

A. He was in his office, No. 68 South Third street, opposite the Exchange. I saw then Mr. Hertz, and from that time (9 o'clock a. m.) I was with Mr. Hertz until 3 o'clock p. m., where, in pursuance of the advertisements, men came and wrote their names down on a book, and agreed to enter the foreign legion at Halifax.

Q. Have you ever seen a bill like this?

A. I have seen this handbill.

Q. Where?

A. In Mr. Hertz's office.

[The bill was here read in evidence. It reads as follows:]

“MEN WANTED FOR HER MAJESTY'S SERVICE.

(Arms of Great Britain, with mottoes.)

“PROVINCIAL SECRETARY'S OFFICE,

Halifax, Nova Scotia, March 15, 1855.

“The lieutenant-governor of Nova Scotia having been employed to embody a foreign legion, and to raise British regiments for service in the provinces or abroad, notice is hereby given that all able-bodied men between the ages of 19 and 40, on applying at the depot in Halifax, will receive a bounty of £6 sterling, (equal to \$30,) and, on being enrolled, will receive \$8 per month, with the clothing, quarters, and other advantages to which British soldiers are entitled.

“Preference will be given to men who have already seen service.

“The period of enlistment will be from three to five years, at the option of the British government.

“Officers who have served will be eligible for commissions. Gentlemen who wish to come into the province will please lodge their names, rank, date of service, &c., at the office.

“Persons who serve in the foreign legion will, on the expiration of

their term, be entitled to a free passage to America, or to the country of their birth.

"Pensions or gratuities, for distinguished services in the field, will be given.

"Nova Scotian and other shipmasters who may bring into this province poor men willing to serve her Majesty, will be entitled to receive the cost of a passage for each man shipped from Philadelphia, New York, or Boston.

"By command :

"LEWIS M. WILKINS,
" *Provincial Secretary.*"

Q. (Another bill here shown to witness.) Have you ever seen this bill?

A. I have, in Detroit.

[The bill was here read in evidence. It read as follows:]

"NOTICE.

"A foreign legion is now being raised in Halifax, Nova Scotia. Persons wishing to join the legion will receive a BOUNTY of £6 sterling, or \$30; from which a deduction of \$5, for travelling expenses to Nova Scotia, will be made. Besides good rations and quarters, men will receive \$8 a month as pay.

"*The period of enlistment is three or five years, at the option of the applicant.*

"For extraordinary service in the field, or wounds, BOUNTIES and PENSIONS FOR LIFE will be granted. Besides which, there is now a project in view, and which will undoubtedly be carried out, to give to each soldier, at the expiration of his term of service, fifty acres, and to each non-commissioned officer one hundred acres of land in Canada.

"All who are inclined to enter the service under the foregoing very favorable conditions, are hereby invited to apply at Niagara City, Butler barracks, or at the WINDSOR CASTLE, Windsor, C. W."

Q. (Another bill shown witness.) Did you ever see this bill?

A. Yes, sir; I had that printed in Detroit.

Mr. Van Dyke. It is a German bill.

Mr. Remak. The paper was printed to the order of the witness.

Judge Kane. The paper now presented is part of the general transaction, which does not directly affect the person on trial. It is like the letter of Mr. Crampton which was read a short time ago, and is a portion of the general narrative.

Question by Mr. Van Dyke. Is that a true translation attached to the German handbill?

A. Yes, sir.

[The translation was here read in evidence. It read as follows:]

"NOTICE.

"In Halifax, Nova Scotia, a foreign legion will be formed. Every one who will enter into this legion, which is for the most part composed of Germans, and has German officers, is entitled to a bounty of £6 sterling, or \$30; from which, however, \$5 for travelling expenses to Nova Scotia will be taken off.

"Moreover, every man will receive full and good maintenance, besides \$8 a month pay.

"The time of service is according to pleasure, 3 or 5 years.

"For extraordinary services in the field, or wounds, bounties and pensions for the whole lifetime will be given. It is also truly in prospect, that every soldier, on the running out of his time of service, will obtain 50 acres, and every non-commissioned officer 100 acres of land in Canada, as his own property.

"Every one who is disposed to fall in with these conditions is hereby notified to repair to the Niagara barrack, not far from Queens-town, Canada West, at the depot there established."

Q. You say you went to Mr. Hertz, and you saw the recruits sign the book there; look at that book, and say if that is it?

A. That is the book.

Q. Where did you see that book?

A. At Mr. Hertz's office.

Q. Did you see any of the parties signing it?

A. Yes, sir, [looking at the book] there is the handwriting of some men.

Q. Will you read me the names of the men you saw sign?

A. The names of the officers were cut out.

Q. Do you recollect the name of Joseph Purnell?

A. Yes, sir; I recollect the names of all the men in my company.

Q. Go on and state what you did after the men enlisted.

A. After we had more than 100 men, we gave them cards, and told them we would be ready to start on Sunday, the 25th of March, 1855, on the steamer Delaware, in the morning, for New York.

Q. What did you tell, or Hertz tell, these men? If you told them anything, what was the understanding?

A. The understanding was, that those men who signed this book—

Judge Kane. Was the understanding announced in the presence of Mr. Hertz?

Witness. Yes, sir; in the presence of Mr. Hertz the men were told that there was a foreign legion now established at Halifax, and that Mr. Hertz would send them to Halifax, to the foreign legion, to enlist in it; every man that is well, and able-bodied, and willing to enlist in this foreign legion, shall have a free passage, and \$30 bounty, and \$8 a month pay; and the men who agreed to be attached to this foreign legion signed this very book.

Q. Who said that they should sign that book?

A. Mr. Hertz; and they signed this book with the understanding to go to Halifax and enlist in the foreign legion; and it was also told to those men that an officer should go in their company, and I was called captain of those men before I started, and was introduced to them, before we started, as their captain; I was to take that company. I recollect Palattre and Purnell very well.

Mr. Van Dyke here asked the witness whether he recollect the names of the various persons who composed his company? when he replied, that he remembered the following, besides some sixty more whose names he did not recollect:

F. P. Garrier, Jacob Branning, Frederick Fuss, Hugh Killen, Fred. Ferdinand Bostandig, Emanuel Urnheart, Edward Rollun, Carl Muhlenhausen, John Schæffold, Petrus Pauls, John Kœlomus, Jacob Blecher, Foley Worrell, Rudolph Charles Ruth, Peter Ropert, Ed. Dobeller, Jacob Roth, Pierce Pelattre, Joseph Purnell, Gustav. Prothe, Gunther Leopold Neisbaum, Wilhelm Heinrich, Karl Altenberg, Karl Barthold, Johann Baumiescher, F. Ulrich.

Q. Were all these persons in your company?

A. Yes, sir.

Q. How many more went with you?

A. Well, I started from here with about 75 or 76 men, and two officers, Lieutenant Essen and Lieutenant Schumann, on the steamer Delaware, to New York.

Q. When did you leave here?

A. On Sunday, the 25th of March, early in the morning, and arrived in New York on Monday morning about five o'clock.

Q. Well, sir, when you got in New York what did you do?

A. I came to New York in the morning at five o'clock, and left my men on board the boat, as I was not furnished with means enough, as I had received only some money from Hertz. I had received tickets and \$25 to go on to New York, and I was there to receive more money.

Q. Was that money given you for the purpose of taking this company on?

A. Certainly; and I was to receive further means in New York to take the men on to Halifax.

Q. When you got to New York what did you do?

A. I went to see Mr. Barclay, the British consul at New York; and when I got there, Mr. Barclay sent me to Delmonico's to see Mr. Howe. The Hon. Joseph Howe was, at that time, agent from the British government in this recruiting business in the States. He was living at Delmonico's. I saw Mr. Bucknell, not Howe. He told me I should be furnished with means as early as possible before 10 o'clock; I had to divide the men in different taverns, and keep them together there for three days. At last I was furnished with tickets and means to start with these men for Boston, where an English brig, the America, was waiting there to receive us and take us on board to take us to Halifax. Mr. Hertz, in the presence of Mr. Bucknell and Mr. Turnbull, told me this.

Q. How did Mr. Hertz get to New York, if you left him in Philadelphia when you sailed?

A. I travelled with the boat, and Mr. Hertz took the railroad. Mr. Howe or Bucknell was to be applied to to let me have the necessary means to go on with the company. I received this money in New York, through Mr. Hertz, at the beginning of the day, and, before I started, some from Mr. Bucknell. I left New York on the Stonington road, and came to Boston. I arrived there about five o'clock in the morning with all the men, and found this brig, the America, ready to take us on board and bring us to Halifax. I embarked my men.

Q. Did you get this money from Hertz, or Howe?

A. No, sir; from Mr. Bucknell.

Q. Did you see Howe in New York?

A. I saw Howe in New York at the time, and received a letter from Mr. Howe to Sir Gaspard le Marchant. I told him I had so many men in town, and wanted some money, and that I wanted tickets and a letter to Sir Gaspard le Marchant.

Q. The tickets you got in Philadelphia only carried you to New York, on the steamer Delaware, then?

A. Yes, sir.

Q. And you went to Howe and told him you wanted tickets, and a letter to the governor, and some money?

A. He gave me a letter, and Mr. Hertz and Bucknell gave me the money.

Q. Who was Bucknell?

A. He was a civil engineer.

Q. Was he with Mr. Howe?

A. He was with Mr. Howe, but I do not know whether he was engaged by Howe only for the purposes of this business or not; I made the acquaintance of Bucknell only a few days before; I saw Mr. Hertz in New York at the time; Hertz told me I was to go on as soon as possible. I was anxious to get the men away from New York, and he promised to see Howe and get money; he kept me twenty-four hours trying to get money; he gave me the money, subsequently getting it from Howe; I embarked from pier B, in New York, and went on the Stonington road to Boston; I got there at five o'clock, and went round with all my men to the T-wharf, in Boston, and found there the vessel which I was promised I would find.

Q. Who promised you?

A. Mr. Bucknell. When I came to this vessel it was in the morning, between 6 and 7. I embarked my men at once; I gave them breakfast, and started at half-past 8 o'clock for Halifax, and arrived there on the 30th of March. When I came to Halifax, the vessel went into a private wharf, and I was put on shore to report myself to the provincial secretary and Sir Gaspard le Marchant.

Q. Who was provincial secretary?

A. Mr. Wilkins.

Q. Is he the man who signs this proclamation?

A. Yes, sir.

Q. Lewis M. Wilkins?

A. Yes, sir.

Q. When you got to the wharf, you went on shore to report yourself to Wilkins?

A. I did so. The vessel was ordered to the royal wharf, and during that time I met some regimental surgeons and some officers of the 76th regiment, some of the artillery. Afterwards Sir Gaspard le Marchant, governor of Nova Scotia, himself, came to the T-wharf.

Judge Kane. The "T-wharf?"

Witness. The "Queen's wharf." He ordered me to file the company in, and show them; I did so, and Sir Gaspard le Marchant, with other officers, passed along by the men, and inspected the men; I introduced these two men I had with me as lieutenants; they were received by the officers as officers; and I received an order from le

Marchant to march the men up to the hospital to have them examined, and afterwards to march them out to Melville island to have them attested. I marched them up to the hospital, and they were there examined, and two or three men rejected, and one kept back as sick. All the others I marched out to Melville island. There they had the British barracks and barracks erected for the foreign legion; there the men were attested. After the man is enlisted, he has to be attested and sworn as a soldier.

Judge Kane. What is attesting?

Witness. There is a judge comes to the quarters of the soldiers, and then the officer is there, and the judge swears the soldiers in; that is the act of attesting.

Q. What is the form of the oath?

A. The form of the oath is, that we swear to serve her Majesty the Queen of England for a time—three or five years, or so many years as the soldiers agree upon; in this case, the agreement was for three or five years, faithfully, and so on.

Q. That is the form of the oath?

A. Yes, sir; that is the oath they administered to each of those men.

Judge Kane. Is there any writing precedes it?

A. It is not in writing, it is a printed form; it is signed by the judge, and afterwards by witnesses; I signed nearly all of them.

Q. Is it signed by the recruit?

A. Yes, sir; it is signed by the recruit. After the men had been attested, I commenced the drill, and bye-and-bye the men received clothing and arms; I was at Melville island, at the officers' quarters, with the other two officers and Dr. Biell, until the 10th of May; I was entered on the army list, as were the other officers, and we received our pay and were treated as officers; on the 9th or 11th of May Mr. Crampton himself came up to Halifax, in order to make better arrangements about this recruiting business, as many men had been arrested in the States and kept back; on the 13th of May I received a letter from Lieutenant Preston, of the 76th.

Q. (Letter shown witness.) Do you recollect this paper?

A. That is the letter of Mr. Preston, in Halifax, when he told me that Mr. Crampton wanted to see me.

Q. Who is Mr. Preston?

A. Mr. Preston is lieutenant in the 76th regiment—the officer who has charge of the barracks in Niagara.

The note was read as follows:

“TUESDAY, May 13, *Halifax*.

“DEAR STROBEL: I am directed by the general to acquaint you that Mr. Crampton wants to see you at his house, at 10 o'clock to-morrow morning; be punctual. If you like, come up to my house at half-past 9 o'clock, and we will go together.

“Yours, truly,

“J. W. PRESTON,

“76th Regiment.”

Q. Where was he at the time?

A. At the time he was at the fort in Halifax with his regiment; the letter stated that Mr. Crampton wished to see me at his quarters at 10 o'clock on Sunday; I went to see Crampton, and there I found Sir Gaspard le Marchant; I went there with Preston, and I was ordered by Mr. Crampton to make a plan out for him, in writing, to go to the United States—that is, to those cities of the United States which lie on the boundary-line, such as Buffalo, Rochester, Cleveland, Toledo, Detroit, Oswego, and others; I wrote a plan for him; I said that I would want so many officers, and for every officer a non-commissioned officer.

Judge Kane. Does the plan affect the parties on trial?

Mr. Van Dyke. I think so; it was after arrests had taken place in some of the western cities that the British minister determined to change the plan of enlistment in the States; and this witness says that, in pursuance of that determination, he received a letter from Lieutenant Preston to call at the quarters of Mr. Crampton; he called there, and Mr. Crampton told him that there had been some difficulty about the recruits, and wished him (Strobel) to prepare another plan, which, if adopted, would avoid that difficulty; he prepared this plan and submitted it to Mr. Crampton, and, if I understand it, the witness will say that the plan was adopted by him with some little variation, and the recruiting was carried on in the United States in accordance with this remodelled plan.

Judge Kane. By either of these defendants in accordance with this plan?

Mr. Van Dyke. If I may be permitted to anticipate the defence, which must be done more or less in every case, it will be, I suppose, the same as made before the commissioner in relation to Budd's company—that the men enlisted in Philadelphia, in that company, as the defendants allege, were nothing more or less than a set of men engaged to work on the railroad in Nova Scotia. We intend to show, by this, that Hertz, in so representing, was but carrying out the remodelled plan adopted more effectually by Mr. Crampton at Halifax. I shall show also, by other witnesses, that at a period subsequent to that of which the witness now speaks, and after the defendants were arrested, the defendant Hertz engaged one Baron Van Schwatzenhorn and one Baron Schuminsky to carry on the enlisting business in Philadelphia, and that another company was enlisted by such agents of Hertz in a manner proposed by the remodelled plan.

Mr. Remak, in reply, stated that the witness had sworn that Hertz requested him to do certain things, and whatever resulted from that alleged fact was admissible. Mr. Strobel had given evidence in regard to drawing a plan, but he had not sworn that Hertz commissioned him to devise or draw that plan. He might have been requested by Mr. Crampton to draw the plan, but the counsel for the defence could not see how that could affect, for the present, his client. He could not be responsible for the acts of Strobel, after Strobel had done what he requested of him; and if he went beyond what was requested, he did it on his own responsibility.

Judge Kane. The evidence taken in connexion with the offer of

the district attorney is admissible entirely as it stands, in the same category with evidence originally given by him of concert of the officer with the British government. If it is not brought home to either of the parties on trial by subsequent evidence, of course it will not affect them.

Mr. Van Dyke. I do not wish my offer to be misapprehended by the counsel for the defence in any particular. I state distinctly to the court that I have evidence to show that there was a regular game played by her Majesty's envoy to evade the law; that these men were seemingly engaged to work on a railroad, but in reality enlisted to serve in the foreign legion, and that they were told by Hertz, if any person questioned them, to reply that they had been engaged to work on a railroad in Nova Scotia. I have, for the prosecution, to establish certain important facts: one is, that the sending of these men to Nova Scotia was for the purpose of their being enlisted in the foreign legion, and their sending them there as workmen on a railroad was a specious disguise, under which they hoped to evade the law of this country. If I show that this was their intention, it is certainly evidence, and the crime is proved, notwithstanding their attempt at evasion.

Judge Kane. The evidence is admissible.

Q. Did you prepare that plan?

A. I prepared it.

Q. (Showing a paper.) Is that it?

A. Yes, sir; it is my own handwriting; it is the plan.

Q. Was this submitted to Mr. Crampton?

A. Not this one. This was the copy I first made. I afterwards made a clear copy of it, which was submitted.

Q. This, then, is the original copy, of which a clear copy was made and submitted to Mr. Crampton?

A. Yes, sir.

The paper was here read in evidence, as follows:

"I have the honor to inform his excellency the envoy extraordinary of Great Britain in the United States, and his excellency Sir Gaspard le Marchant, the governor of Nova Scotia, of the plan I have adopted to raise the greatest possible number of men in several different cities of the United States on the boundaries of Canada.

"I wish to station in Buffalo Lieutenant Schuman with Corporal Roth.

"In Detroit, Dr. Reuss with Corporal Kamper.

"In Cleveland, Dr. Aschenfeldt with Sergeant Krieger.

"Opposite to Detroit, Sergeant Barchet shall receive the individuals sent by Dr. Reuss, and his duty will be to send them, as fast as they arrive, by railroad to Queenstown, where a depot must be established, and a magistrate appointed to enlist and attest the men; and it will be the business of the commanding officer of this depot, when a sufficient number is together, to send them by steamboat wherever his excellency may decide. Those officers stationed at the above-mentioned cities will strictly follow the instructions given to them, through me, from his excellency, in regard to the manner and way to be used in encouraging and sending such individuals who are willing or desirous

of leaving the United States to enlist in the British service. My intention in giving to each commissioned officer a non-commissioned officer as assistant, is to enable those gentlemen to find out said individuals, and to avoid the necessity of employing, for this purpose, strangers, who might easily deceive them.

"My opinion is, that every officer, with the assistance of his non-commissioned officer, will be able to transact all the business without being compelled to hire regular agents or runners—that is, if the gentlemen know the proper way of managing.

"I will myself visit each of the places mentioned, and will particularly confine myself to where my presence will be most required. I shall also probably visit Chicago, where, doubtless, a great number of men may be got. We can then agree on reasonable terms for having them conveyed by railroad to Detroit, which expense, in my opinion, would not exceed \$2 50 per head.

"I saw all the officers and non-commissioned officers yesterday evening, and held a long conversation with them; the result of which is, that we all perfectly understand each other; that they are all entirely satisfied, and that every one is willing to do his very best in regard to this matter.

"I have also made estimates of all the expenses of the officers connected with this matter, for the period of one month, at their different points of destination, including their travelling expenses, which I take the liberty of laying before your excellencies:

"Say the travelling expenses of the officers from this place to their different stations, £10 sterling each	\$400 00
"To Schumann, Aschenfeldt, and Reuss, each \$240 per month	720 00
" [From this money each has to pay his non-commissioned officer, and to meet all other expenses that may be necessary in sending the men over on the Canadian side; pay of temporary agents, runners, and tavern-keepers, included.]	
"Pay for Weiss, Barchet, and other non-commissioned officers, \$100 each	300 00
"My travelling expenses from town to town, hotel expenses, pay of my non-commissioned officer, and his travelling expenses	300 00
	<hr/>
	1,720 00

"Thus making a total amount of \$1,720, equal to £344 sterling.

"This, or at most £360, would, in my opinion, be the amount requisite to enable ten officers to carry on operations for one month, and, with reasonable good fortune, to deliver on the Canadian shore a large number of serviceable able-bodied men.

"I have the honor to remain, your excellencies' most obedient, humble servant."

Q. Was that plan adopted?

A. That is the plan which was approved and adopted by Mr. Crampton and Sir Gaspard le Marchant, and I received orders to bring next

morning, at 11 o'clock, the officers mentioned there, four non-commissioned officers of my company, all attested men, and the soldiers to the provincial building, and meet there Sir Gaspard le Marchant and Mr. Crampton. I went there with those men; I met there Mr. Crampton, Sir Gaspard le Marchant, and Lieutenant Preston; I was ordered to leave Halifax immediately and repair to the States, and I left Halifax in company with Mr. Crampton and Preston of the 76th, with officers and non-commissioned officers; when I saw Mr. Crampton there I was in uniform, and my non-commissioned officers were in uniform; when we left they received civil clothes from the government there for this purpose and went on with me; when we came to Portland, Mr. Crampton gave me orders to go with him to Quebec to see Mr. Head, the governor-general of Canada, to have a perfect understanding about the depot and the means of sending men through Canada to Nova Scotia; I went with him; I saw Sir Edmund Head in the presence of Mr. Crampton; I received letters from Sir Edmund Head to get barracks at Niagara; these barracks were to receive the men who were sent out of the States to enlist in the foreign legion; I received also at Sir Edmund's house—

Judge Kane. I am anxious not to go beyond the limit of courtesy to a foreign government. I do not wish to penetrate what was done there, unless it appears connected with the persons now on trial. The district attorney must guide the witness after this suggestion, so as to avoid the appearance of too close an inquiry into matters not clearly before this court as matters of judicial investigation.

Mr. Van Dyke. I understand the suggestion of the court, and will try to keep the witness within the proper bounds. My whole object is to get the general plan of operations, and then to show that the object of the general plan was to procure men from the States to join this foreign legion, and that the defendant co-operated in that general plan.

Q. (Paper shown.) Will you look at that paper and state what it is?

A. It is the instructions I received at Quebec, in Sir Edmund Head's house, out of Mr. Crampton's own hands. The original was written in Mr. Crampton's own handwriting, and was written, at least part of it, in my presence in his room. This is a copy made from the original; I made it for the purpose of preserving a copy. The original I gave back, in a report I made to Sir Gaspard le Marchant, in Halifax. That report stated what I had done, to clear me of two charges made against me up there.

Q. That, then, is a copy made from the original instructions of Crampton, as to your duty in the United States?

A. That is a copy of the original instructions I received at this time from Mr. Crampton.

The paper was being read as part of the evidence, when, on motion, a recess was taken for ten minutes. On the court re-assembling, the reading of the paper was concluded. It is as follows:

“Memoranda for the guidance of those who are to make known to persons in the United States the terms and conditions upon which recruits will be received into the British army:

"1. The parties who may go to Buffalo, Detroit, or Cleveland, for this purpose, must clearly understand that they must carefully refrain from any thing which would constitute a violation of the law of the United States.

"2. They must, therefore, avoid any act which might bear the appearance of recruiting within the jurisdiction of the United States for a foreign service, or of hiring or retaining anybody to leave that jurisdiction with the intent to enlist in the service of a foreign power.

[Both these acts are illegal by the act of Congress of 1818, sec. 2.]

"4. There must be no collection, embodiment of men, or organization whatever, attempted within that jurisdiction.

"5. No promises or contracts, written or verbal, on the subject of enlistment, must be entered into with any person within that jurisdiction.

"6. The information to be given will be, simply, that to those desiring to enlist in the British army, facilities will be afforded for, so doing, on their crossing the line into British territory; and the terms offered by the British government may be stated as a matter of information only, and not as implying any promise or engagement on the part of those supplying such information, so long at least as they remain within American jurisdiction.

"7. It is essential to success, that no assemblages of persons should take place at beer-houses, or other similar places of entertainment, for the purpose of devising measures for enlisting; and the parties should scrupulously avoid resorting to this or similar means of disseminating the desired information, inasmuch as the attention of the American authorities would not fail to be called to such proceedings, which would undoubtedly be regarded by them as an attempt to carry on recruiting for a foreign power within the limits of the United States; and it certainly must be borne in mind that the institution of legal proceedings against any of the parties in question, even if they were to elude the penalty, would be fatal to the success of the enlistment itself.

"8. Should the strict observance of these points be neglected, and the parties thereby involve themselves in difficulty, they are hereby distinctly apprized that they must expect no sort of aid or assistance from the British government; this government would be compelled, by the clearest dictates of international duty, to disavow their proceedings, and would, moreover, be absolved from all engagements contingent upon the success of the parties in obtaining, by legal means, soldiers for her Britannic Majesty's army."

Examination continued by Mr. Van Dyke.

Q. The paper just read you copied from the original one in the handwriting of Mr. Crampton?

A. Yes, sir.

Q. (Another paper shown witness.) In whose handwriting is this paper?

A. At that very time I also received this cipher to telegraph with to Mr. Crampton, and to Halifax, about this recruiting business; I can-

not swear as to whose handwriting it is in, but I believe it is Mr. Crampton's; I did not see him write it, but he handed it to me.

The paper was here given in evidence. The following is a copy :

Letter.	Cipher.	Letter.	Cipher.
"a	y	n	q
b	v	o	n
c	j	p	c
d	l	q	h
e	x	r	o
f	e	s	p
g	z	t	k
h	u	u	g
i	b	v	d
j	w	w	m
k	t	x	r
l	a	y	i
m	s	z	f''

Q. You were to telegraph him by this cipher, instead of the usual way?

A. Yes, sir.

Q. What was the object in giving you this cipher?

A. Such ciphers were given to several officers—Mr. Smolenski, Mr. Cartensen, and men actually engaged in the recruiting business, received those ciphers.

Q. Was it for the purpose of avoiding detection?

A. It was for the purpose of avoiding detection, and avoiding any difficulties with the authorities here. It was to enable me to telegraph to Mr. Crampton, from every place I might visit, without the people in the telegraph offices understanding it.

Q. Were all the officers sent on this recruiting to telegraph to Mr. Crampton as to their proceedings, and was that cipher to be used?

A. Yes, sir.

Q. (Card shown witness.) What is that?

A. That is a card of invitation to Sir Gaspard's table, in Halifax, received on the 8th of April.

The card was read as follows :

"His excellency, Sir Gaspard, and Lady le Marchant, request the honor of Captain M. F. O. Von Strobel's company at dinner, on Sunday, 8th April, at $\frac{1}{4}$ to 7 o'clock.

"BELVIDERE.

An answer is requested."

Q. Are these also cards of invitation to you?

A. Yes, sir.

The cards are here read as follows :

COLONEL CLARKE,
And the officers of the seventy-sixth regiment,
Request the honor of
 CAPT. STROBEL AND THE OFFICERS OF THE FOREIGN LEGION,
Company at dinner,
On Wednesday, 18th April. An answer will oblige.

COLONEL FRASER, COLONEL STROTHERD,
And the officers of the royal artillery and royal engineers,
Request the honor of
 CAPTAIN MAX F. O. STROBEL'S
Company at dinner,
On Tuesday, the 3d April, at seven o'clock.
Artillery park. An answer is requested.

Judge Kane. What are these papers for?

Mr. Van Dyke. To corroborate what the witness says.

Judge Kane. When the witness is impeached, it will be time enough to corroborate what he says.

Mr. Van Dyke. I withdraw this paper.

Q. (Letter shown witness.) Did you receive that letter from Mr. McDonald?

A. Yes, sir. He is an officer in the provincial secretary's office.

The letter was here read in evidence as follows :

"PROVINCIAL SECRETARY'S OFFICE,
 "May 3, 1855.

"DEAR SIR : I am directed by his excellency the lieutenant-governor to introduce to you the bearer, Lieutenant Kuentzel. He comes with letters to Sir Gaspard from Mr. Crampton. You will please explain to him the steps necessary for him to secure his commission.

"Your obedient servant,

"BRUCE McDONALD.

"Capt. STROBEL, 1st Company Foreign Legion."

Q. (Letter shown witness.) Do you recollect this letter?

A. This is a letter written by Preston to me, while I was actively engaged in recruiting men in Buffalo, Cleveland, Detroit, and other places. Mr. Preston had, at that time, charge of the barracks in Niagara.

The letter was read in evidence. It is as follows :

"DEAR SMITH : I send you the accompanying order, in currency, equal to £80 sterling, which please send me a receipt for by return of post. I find I cannot make any arrangement with the railroad peo-

ple here. They say the tickets had better be paid for at Windsor ; which I think is best also, for then the men will come to me clear of expense, which is the intention. Tell Schumann and Dr. Aschenfeldt to telegraph me how they are getting on at once, and how *many*, or if they have got any men. Let me hear also from you.

“ Yours, truly,

“ J. W. PRESTON, 76th Regiment.

“ NIAGARA, 4th June, 1855.”

Witness. This Mr. Preston afterwards took command of the depot that was established in Niagara town.

Q. This letter says “ Dear Smith : ” what was the meaning of that ?

A. I was obliged to take that name, because I was known as being previously connected with enlisting in the States.

Q. (Paper shown witness.) What is this ?

A. That is a telegraph I received from Preston.

The paper was read in evidence, as follows :

[By Telegraph from Niagara.]

“ WINDSOR, June 4, 1855.

“ How many men have you got ? Money leaves here to-morrow morning by mail, on U. C. Bank—answer immediately.

“ J. W. PRESTON.

“ To Mr. SMITH.”

Witness. Mr. Preston was the medium between myself and le Marchant. At Halifax, Preston received the orders from le Marchant and telegraphed them to me.

Q. (Paper shown witness.) This is another telegraph from Preston, is it not ?

A. Yes, sir.

The telegraphic despatch was read in evidence, as follows :

[By Telegraph from Niagara.]

“ WINDSOR CASTLE, 7th June, 1855.

“ To Mr. SMITH : Send in statement of money issued and how applied. Tell all the others to send me similar statements ; until such arrive I cannot issue for next month.

“ J. W. PRESTON.

(“ Paid.”)

Q. Go on and state what occurred after you left Quebec ?

A. I left Crampton in Quebec, and travelled with Preston and another English gentleman, Captain Bowls, to Montreal ; I there received orders for another English officer in Toronto, to give over to us the barracks in Niagara town ; Preston took charge of the barracks ; I met my officers whom I had sent from Portland to Niagara ; they were sent from Portland to Niagara Falls ; I met them at Niagara Falls, and directed them to go to different places—to Cleveland, Detroit, and Buffalo ; and afterwards I sent one non-commissioned officer to Chicago ; I was called back ; I commenced it about the 4th of June, and I was recalled on the 13th, and arrived back in Halifax ; I was

recalled by the officers, because during this time I was only able to enlist sixty or seventy men, and Sir Gaspard expected a great many more ; and through this, on account of the intrigues of Mr. Preston, and some other officers who were anxious to receive commands in this foreign legion, I was recalled to Halifax ; I was charged with having kept two officers on the Canada shore instead of sending them all into the States ; and I myself, instead of travelling and going to Chicago, Cleveland, and all around all the time to every place, was charged with stopping too long in one place—in Windsor.

Q. Who made these charges ?

A. They were made by Mr. Preston, and sent to Halifax.

Q. Who sent to you and told you of them ?

A. Sir Gaspard le Marchant. He said that these charges had been made, and that was the reason I was sent for to Halifax. I requested a court-martial, and wrote a long account to le Marchant. I also sent it to Crampton, by a friend of mine, Mr. Oehlschlager ; my company was still at Melville island, under the command of one of the officers I left there.

Q. You saw them there at that time ?

A. I was forbidden to see the men, and the men had strict notice not to converse with me—at least the men received such notice the second day I was there. I told the governor-general, that under such circumstances I would leave, and the sergeant was put in irons, and fifty men of my company sent to prison, for conferring with me by sending to me their non-commissioned officer. I left Halifax with the America, and came back to the States, and since that time I have had nothing to do with this concern. I saw Hertz here afterwards. Mr. Crampton took the address of every one of the agents who had been engaged in recruiting at that time in Boston, New York, Philadelphia, and Baltimore, and told me he was going to see them.

Q. Who did he take as the name of the person in Philadelphia ?

A. Mr. Hertz was the man recruiting in Philadelphia.

Question by Mr. Remak. Who said so ?

A. Mr. Crampton took the names of different persons recruiting in different cities.

Q. Whose name did he take as the person in Philadelphia ?

A. He knew the names already, but took the address of every one of those gentlemen.

Q. From you ?

A. From me, those I had in my possession—the address of Captain Carstenson, of Boston, and other parties in New York ; of Smolenski, and the address of a friend of mine in Baltimore.

Q. Did Crampton take the address of Hertz from you ?

A. He said he knew all about the proceedings against Hertz, and when he came to Philadelphia he would settle with every one of those gentlemen, and arrange matters in a different way, because he thought proper not to send men by the vessels any more, but by railroad into Canada.

Q. Do you know about his giving any order about engaging emigrant runners ?

A. Yes, sir ; he allowed me to pay every runner \$4 for a man.

Q. Do you know what Hertz was to get for every man he sent?

A. I do not know exactly the amount Mr. Hertz received; I know he received money, and I know that they said in Halifax that Mr. Hertz——

Mr. Remak. I object to that.

Question by Mr. Van Dyke. Did you ever hear Hertz, or any other person or persons in his presence, say that he received any money, and how much?

A. Yes, sir, I heard Mr. Hertz say he had received money, but never enough to cover his own expenses.

Q. Did he tell you from whom he received it?

A. He told me he would receive money from Mr. Howe.

Q. What else did he say to you in reference to this matter?

A. Mr. Hertz told me he had connexion with the English government, and that Mr. Crampton and Mr. Howe were the proper agents for paying out the money, and giving tickets and giving recommendations for officers to get commissions. Mr. Hertz said so, and said he had instructions from the British government to that effect, and that he would receive head-money for the men. He mentioned Howe and Crampton as persons from whom he received it.

Q. Did he mention any other?

A. Not that I know of.

Q. Was Mr. Bucknell known to Mr. Hertz?

A. He did not mention him as a person engaged in it, or who had engaged him in it.

Q. Did he mention any other besides Mr. Crampton and Mr. Howe?

A. Not that I know of.

Q. Not that you recollect?

A. I do not recollect any other person.

Q. (Paper shown.) Is that the report you made to Mr. Crampton of the transaction?

A. That is the report I made to Mr. Crampton.

Q. Was it delivered to him?

A. I sent it to Washington, but the bearer did not find Mr. Crampton there; he had at that time gone up to Niagara. I sent a friend to Washington with this report to Mr. Crampton, to let him know everything that had occurred.

Q. When he did not find Mr. Crampton in Washington, where did he take it to?

A. He took it to New York, and left it with Mr. Stanley, the vice-consul there.

[The report was here given in evidence. It contains a full history of the transaction, from the time the witness (Strobel) left Halifax until his return.]

It is as follows :

WINDSOR, C. W., *June 18, 1855.*

SIR: After having laid before you my plan for raising troops for the British army in the United States and on the Canada frontier, I received from you, at the provincial building, Halifax, Nova Scotia, in the presence of his excellency Mr. Crampton, minister from Great

Britain to the United States, Mr. Preston, lieutenant 76th regiment, and officers of the foreign legion, the following instructions :

“You will repair immediately to the United States, accompanied and assisted by Drs. Aschenfeldt and Reuss, Lieut. Shuman, Mr. Mirback and four non-commissioned officers, to raise men for the British army within the jurisdiction of that government. You will, in accordance with your plan submitted to me, station said officers and non-commissioned officers at the posts agreed upon, unless it may in your judgment appear expedient to alter the details of said plan. You are also authorized to order back to Halifax any of your assistants who may, in your opinion, be incompetent for the service, or who may neglect the duty assigned to them. You will receive travelling expenses for yourself, officers, and non-commissioned officers; also, before leaving Halifax, the half-monthly pay as per estimates, in advance, for officers and men. At the expiration of the half month, you are authorized to draw from Mr. Preston the half-monthly pay again in advance, and so on. You are further authorized to draw on Mr. Preston for such sums as you may require for the transportation of men, head-money, &c. You will receive all orders from me through Mr. Preston, whom you will consider as my acting aid-de-camp in this matter, and you will be the medium to transmit those orders to your officers, so that there can be neither interference with, nor interruption of, the plans laid down by you. Mr. Preston will be commanding officer of the recruiting depot at Niagara town. You will exercise no interference with the transmission of men from Niagara to Halifax, but will confine yourself strictly to the duty of obtaining men in the United States, and of forwarding the same to Mr. Preston at Niagara. You are authorized to employ such assistants as you in your judgment may deem necessary, and are further empowered to state in my name, to any gentleman bringing a certain number of men, (say 120,) that they will receive from the British government commissions as captains in the foreign legion, and others different commissions, in proportion to the number of men they may bring.”

In accordance with the above instructions, I started from Halifax on the 15th of May, accompanied by my officers, as above mentioned. At Windsor, N. S., I fell in with his excellency Mr. Crampton, Lieut. Preston, and Capt. Bowls, who had left Halifax the same day. We travelled together to Portland, Me., where we arrived on the 18th ult. Mr. Crampton requested me to go with him to Quebec, L. C., as he was desirous that we should have a perfect understanding with, and the full co-operation of, his excellency Sir Edmund Head, governor of Canada. In compliance with this request, I ordered my officers and non-commissioned officers to repair to Niagara Falls, there to await my arrival. We arrived at Quebec on the 20th ult., and on the following day were received by his excellency Sir Edmund Head, and held a conference with him, in which he offered his best assistance in forwarding our object, and at once gave up the barracks at Niagara town as a recruiting depot, and accordingly sent for Major Elliot; which proceedings detained us until the 23d ult. On the evening of that day, Lieut. Preston, Capt. Bowls, and myself, started in company with Major Elliot for Montreal, where we arrived on the morning of

the 24th of May. Arrangements were then entered into with Col. Bell, in regard to the barracks at Niagara and La Prairie. On the following day I started alone for Niagara Falls, C. W., where I arrived on the morning of the 27th. Lieut. Preston and Capt. Bowls started for Toronto on the 25th, and hence did not arrive at Niagara Falls till the 28th. These gentlemen remained at Niagara Falls till the 30th, when they took possession of Butler barracks, and the first arrangements were made for forwarding recruits to that station. As your excellency will here observe, I was up to this moment, viz: the 30th or 31st of May, unable to move one step in the object of our expedition, it having required all the time to arrange the preliminaries. On the same day that Mr. Preston left Niagara town, I learned from Dr. Aschenfeldt and Mr. Shuman that the conduct of two of my non-commissioned officers, Sergeants Roth and Krieger, had been unworthy of the confidence reposed in them, and I therefore deemed it advisable to send the said men to Lieutenant Preston, at Niagara town. I also thought it necessary to send to Niagara one of my officers, for a double purpose—1st. To act for Mr. Preston as interpreter on the arrival of recruits; and 2d, as we were unable actually to enlist the men in Canada, I deemed it well that some German of experience and age should be with the recruits sent on, to keep them in proper spirits, and to prevent any loss by desertion from the barracks, or *in transitu* to Halifax. I accordingly deputed Mr. Mirback for this service, and, with the license permitted me in your instructions of the 14th of May, was therefore obliged to modify my plan to suit this emergency. On the 30th instant, I went with Lieutenant Shuman to Buffalo. Having visited some of the localities in that place and Fort Erie, on the opposite shore of the Niagara river, I gave Lieutenant Shuman the following orders, in accordance with the instructions I had received from Mr. Crampton, and which I respectfully beg leave to subjoin. 1st. I ordered Mr. Shuman to take up his quarters on the Canada shore, at the village of Fort Erie. 2d. To have his non-commissioned officer, Corporal Kamper, stationed in Buffalo. 3d. To go daily to Buffalo, and, in connexion with Corporal Kamper, there to make such inquiries as might lead to the obtaining of men. 4th. To send the men as quickly as he should obtain them to Lieutenant Preston, at Niagara, and at the same time to report to me regularly the number of men obtained, and all circumstances relating to them. 5th. To take particular pains to lay out no moneys on the American side, but whatever related to the expenditures to induce runners to bring men to him should be positively and rigidly transacted on the Canada shore; and further, if it were necessary to keep men together for a longer term than one day, to be careful to do so without the precincts of the United States. This latter order is strictly in accordance with articles 2d and 4th of Mr. Crampton's instructions. On the same evening, May 30, I ordered Dr. Reuss to leave for Detroit, and informed him that he would co-operate with Dr. Aschenfeldt, who would be stationed at Windsor, on the Canada shore of the Detroit river. I also communicated to him, in effect, the same orders I had already given to Mr. Shuman. I went to Niagara town to draw the half-monthly advance pay for officers, on the 31st of May. As Mr. Pres-

ton was unable to pay me the amount which I required, he gave me but £40 sterling. On the 1st June I left Niagara town, accompanied by Dr. Aschenfeldt, for Cleveland, Ohio, where I had already stationed Sergeant Barchet. Passing through Buffalo, I saw Lieutenant Shuman, and supplied him with some money for a few days, until I should obtain the balance of the half-monthly pay from Mr. Preston. On the 2d instant I saw Barchet in Cleveland, and supplied him with as much money as I could spare. On the 3d I arrived, with Dr. Aschenfeldt, at Detroit; I saw Dr. Reuss, and supplied him with money. I then supplied Dr. Aschenfeldt with money, and left him at Windsor. On the 4th of June I again started for Niagara town, in order to receive from Mr. Preston the balance of the second half-monthly pay, which I must here remark was a most useless journey, both as regards the expense and the loss of time. Had the money been properly forthcoming in the first instance, this journey would have been avoided; but I determined, as I was now obliged to go there, to make use of the journey as a means of again visiting the different posts, and paying to the officers the balance of their half-monthly dues. In this I was again frustrated by the failure of the telegraph office in sending me a despatch of Mr. Preston, as a check had already been sent by mail for the amount. In spite of this, however, I telegraphed from Niagara to Mr. Shuman to meet me at Chippewa, and report to me the result of his proceedings in Buffalo. His report was, much to my regret, and contrary to all my expectations, very disheartening—he having sent but four or five men to Niagara. Having learned by letter from Albany, New York, that there was a fair prospect at that place of obtaining from fifty to one hundred men, I ordered Mr. Shuman to direct Corporal Kamper to undertake the whole business in Buffalo, and to repair at once to Albany, then to place himself in connexion and communication with the emigrant offices and intelligence depots there, and to use his most strenuous efforts to obtain men, also to communicate with me at once on the subject. As I have already stated, the check for the balance of the pay had been sent to Windsor while I was *in transitu* between that place and Niagara. I was therefore without money, and gave Lieutenant Shuman a draft on Mr. Preston for £20 sterling, knowing that it would require at least three days for me to forward the money from Windsor to him. On presentation, Mr. Preston refused to honor the draft. Considering that these matters would be in proper train in Buffalo, and supposing that Shuman would leave at once for Albany, I returned to Windsor, in order to receive a report from Sergeant Barchet, stationed at Cleveland, and to inform myself how matters were progressing in Detroit. I returned to Windsor, C. W., on the evening of the 7th instant. On the following morning, to my utter astonishment, Mr. Shuman, who was kept by Mr. Preston at the depot, and, in consequence of it, was not able to see his men off at Buffalo again, or to supply him with money and to give him orders in regard to my sending Mr. Shuman to Albany, had left Niagara by order of Mr. Preston. The night train came into Windsor in sixteen hours after my arrival, bringing me the subjoined order from Mr. Preston, marked X. As the order purports to have emanated from your excellency, I promptly obeyed the same, and sent Mr. Shuman to

Cleveland for Barchet's account, at the same time giving him those of Drs. Aschenfeldt and Reuss and my own, giving him no further orders, but simply telling him to return to Mr. Preston as soon as possible. I had received from Barchet the information that matters in Cleveland were as disheartening as in Buffalo; also saying that a Mr. Seybert, who keeps an intelligence office there, was willing to undertake the business if we could station some one at Port Stanley, for the purpose of receiving men whom he would send there. I wrote to Mr. Preston requesting him to send a non-commissioned officer or some other person to Port Stanley, to receive the men whom Mr. Seybert might send. This request was unattended to, and Mr. Preston did not even condescend to notice it.

From all I could learn, Chicago and Milwaukie offered large inducements as a field for our operations; and as I thought the port of Cleveland would have been provided for by Mr. Preston, in accordance with my request, I sent Barchet on the 11th instant, in company with another man, to Chicago, also Dr. Reuss to Toledo, which place I had myself visited, and deemed a good port for obtaining men. I directed Barchet to communicate with me by telegraph, or otherwise, as soon as my presence and the money for tickets should be requisite in Chicago for bringing men to Niagara.

On this day, the 11th instant, Mr. Theo. A. Oehlschlager arrived at Windsor from Niagara Falls. Mr. Oehlschlager is a gentleman already known to Mr. Crampton, and of whom Mr. Crampton and myself had several conversations. I spoke very favorably of him, and Mr. Crampton advised me to obtain so valuable an assistant. Mr. Oehlschlager is a British subject by birth, being a native of Quebec, L. C., speaking German like a native, and French with fluency; the value of his assistance cannot be over-estimated. Having, as I have already stated, lost two non-commissioned officers, and having stationed one officer permanently with Mr. Preston, I felt the necessity of more assistance, and knowing no one more competent, I accordingly wrote for him from Cleveland on the 2d June. I remained at Windsor on the 12th and 13th instant, in the expectation of receiving a letter from Barchet, and also anticipating the return of Dr. Reuss from Toledo with men. On the morning of the 13th I received a letter from Barchet, stating that Chicago was a capital place, and that a great many men might there be obtained, but it would be necessary to forward them immediately, as it would be impossible to keep them long together. I accordingly wrote at once a letter to Mr. Preston, requesting him to send me £100 sterling. Before this letter was mailed, I received the following despatch from Mr. Preston: "Send Aschenfeldt back immediately." I accordingly did so, sending the letter I had written by Dr. Aschenfeldt. On the following day Dr. Reuss returned from Toledo, bringing with him four men, stating at the same time that a number of from eighty to one hundred men may be obtained alone in Toledo. He also brought very good news from Sandusky and Monroe. I then received a despatch from Dr. Aschenfeldt, saying, "We all go back; more by letter." Having collected some eleven men at Windsor, besides seven already forwarded from this place to Niagara, and deeming the expedition, from some

unknown cause, entirely broken up, I telegraphed to Mr. Preston, asking what I should do with the men. His answer was: "Forward men. Recall Barchet, and return to-morrow." Not comprehending the whole business, I deemed it best to repair at once to Niagara and have the mystery cleared up. I accordingly started the next morning, leaving Mr. Oehlschlager in my place at Windsor. I arrived at Niagara on the morning of the 16th. I was cordially received by Mr. Preston, who informed me that, having held several conversations with Major Browne, Mr. Wieland, and other gentlemen, he had come to the conclusion that we (myself and the officers under my charge) had neglected our duty, and that he had two charges in particular to make against me—1st. That I had ordered two of my officers to remain on the Canada shore. 2. That I, myself, had remained too long inactive at Windsor, C. W. In consequence, he had deemed it his duty to send a despatch to your excellency, acquainting you with said disposition on our parts. That you had replied, directing him to act on his own responsibility. That thus empowered, he had deemed it proper to recall all those employed, and to send them back to Halifax. I informed Mr. Preston that I would at once comply with the order of your excellency; at the same time I assured him of my opinion as to the unadvised and rash proceedings he had deemed it proper to adopt, and further expressed my belief in his having been influenced in these measures by Major Browne, Mr. Wieland particularly, and others, who were anxious, to my perfect knowledge, to obtain commands in the foreign legion. While in Niagara town, I saw a despatch from this Mr. Browne to Lieutenant Preston, stating in effect that my letter to Mr. Preston, of the 13th instant, was a falsehood, and that there were no men in Chicago to be sent. The following is, I think, the wording of the despatch: "The fifty men a myth." Having some little personal business in Windsor, and wishing to communicate with Mr. Oehlschlager, I returned here this morning. On my arrival, Mr. Oehlschlager informed me that, shortly after my departure on the 15th instant, a Mr. Browne arrived here from Mr. Preston. He represented himself, or at least led Mr. Oehlschlager to believe, that he was a major in the British service. Mr. Oehlschlager, under such a supposition, believing him to be an officer in the British army, and an authorized agent of your excellency, immediately gave up the charge of the post and of the men. Mr. Browne sent the men on to Niagara that evening, in charge of Dr. Reuss, who left yesterday for Halifax. I also found here a despatch from Chicago from a man named Konen, employed by me at that place, which fully substantiates the good news contained in Barchet's letter. It reads as follows: "Come here immediately. Twenty ready; tickets wanted."

I have thus far, your excellency, attempted to give a rough outline of what I have done since my departure from Halifax, and shall now leave it with yourself to judge whether the time has been wantonly thrown away, and whether I have neglected my duty or not. There have, it is true, been many causes which have rendered the expedition less successful than I had imagined in the outset, but over these circumstances I have, as you may judge from the above statement, been

able to exercise but little or no control. Besides, your excellency will be pleased to take into consideration that we have not had more than eight or nine working days of real trial. We did not get fully into operation before the 4th or 5th. On the 7th, Mr. Shuman was withdrawn by order of Mr. Preston. Not before the 9th, the bills we had printed were in our hands and posted. The 10th was Sunday. On the 13th, the expedition was virtually broken up, Dr. Aschenfeldt recalled, and your excellency in possession of a despatch to that effect.

The difficulties under which we had to labor were, in the beginning, very great. In the first place, shortly before our arrival, the navigation of the great lakes was opened, and thousands of men who had lain idle for months were at once thrown into employment. A week before Mr. Shuman arrived at Buffalo, six hundred working men had been withdrawn from that place, to work on the telegraph line through Newfoundland. In short, work was plenty, and the weather mild; it is, therefore, but little wonder that under such inauspicious circumstances we did not succeed at once. Then the Americans have in every city in which we have been a recruiting officer, where they offer \$12 per month and a bounty of one hundred and sixty acres of land, besides giving head-money to the runners. Again, a great antipathy appears to prevail throughout the United States to British service, and a strong mistrust of the whole business, from the occurrences relating thereto which took place in the eastern cities. These difficulties had to be overcome; and just when we arrived at a point where the prospects began to brighten, and we had tangible hopes of our ultimate success, the whole matter, as far as ourselves are concerned, is given up, without my being in the slightest instance consulted or advised with. From certain remarks of this Mr. Browne, I am led to believe that the conduct of the money matters of the expedition has also been called in question. In refutation of any such malignant charge, I respectfully beg leave to subjoin my accounts, and request that those of my officers may be strictly examined.

A few words in relation to the charges made against me by Mr. Preston. The first is simply enough refuted by all that part of the above statement which refers to my orders and instructions to Dr. Aschenfeldt and Mr. Shuman. Of the second, I have but to observe, that when I started from Halifax I was under the impression that I was given charge of this expedition in the United States; that I had discretionary power to take up my headquarters where I deemed best, and where I could most readily hear from my assistants, and not that my conduct was to be subject to the espionage and impertinent interference of men of whom I had no knowledge whatever, in connexion with this expedition. I refer to Mr. Browne and others. Nor can I conceive how Mr. Preston could commit such a gross error as he has done, in breaking up this expedition, without stronger and more sufficient reasons.

I have now to make a few remarks on Mr. Preston's conduct in connexion with this business, which, however painful it may be, I consider it my duty to your excellency, under whose orders I have been engaged in this matter, and to myself. Mr. Preston, in the first

place, as early as the 7th inst., violated the spirit and letter of your instructions to me in two instances: 1st. By failing to pay my draft sent by Mr. Shuman; and 2dly. By sending Mr. Shuman down to Windsor, when I sent him to Albany. In short, I have failed to meet from Mr. Preston that cordial co-operation and friendly assistance which I had hoped for, and on which the success of such an expedition so eminently depends. I feel pleasure, however, in saying that I can look upon this failure on the part of Mr. Preston in no other light than as an error of judgment, and his being too easily influenced by others.

With the above statement of the facts of the last month, and which I am ready to substantiate at any moment by the testimony of my officers and others, I beg leave to submit this, my report, to your excellency's kind consideration.

I have the honor to remain, your excellency's very obedient servant,
 MAX FRANZ OTTO STROBEL,
Captain For. Leg.

To His Excellency Sir GASPARD LE MARCHANT,
Lieutenant Governor of Nova Scotia.

Mr. Remak. Was this paper ever delivered?

A. It was delivered to Mr. Crampton and Sir Gaspard le Marchant.

Mr. Van Dyke. Did Mr. Hertz say anything to you in reference to having advertised in any paper in Philadelphia?

A. Yes, sir, the advertisement was in Mr. Hertz's office, in the newspapers.

Q. Did he say anything to you as to his advertising?

A. He said he was obliged to have it advertised in order to get men.

Q. What advertised?

A. This proclamation. Mr. Hertz sent men to the office of the paper to see if it was advertised.

Q. When was that?

A. I cannot recollect the very date—it was before I went away with my company.

Q. Do you recollect the advertisement?

A. Yes, sir, I recollect the advertisement; I have seen it in the paper, but do not recollect the very day.

Q. What do you know of Mr. Hertz putting this (showing witness the *Pennsylvanian* containing the advertisement) in the paper?

A. Mr. Hertz says, I suppose by this advertisement we would get some men.

Q. Where did you last see Hertz, before sailing from Philadelphia with your men?

A. I saw Mr. Hertz on the boat. He came down in the morning to the wharf where we sailed from, and it was at that very moment he gave me the money, \$25.

Q. On the boat Delaware, on which you sailed on Sunday morning, of March 16, 1855?

A. Yes, sir.

Q. Will you state to the court and jury whether you recommended to Mr. Crampton a certain Colonel Burgthal?

Mr. Remak objected. Objection was sustained.

Question by Mr. Van Dyke. Is there anything else you recollect in connexion with Mr. Hertz that you have not stated? If there is, state it. Any conversations that you had with Mr. Hertz or Mr. Crampton about Mr. Hertz being engaged in this business.

A. I remember a conversation with Crampton about Hertz, where Crampton said he believed——

The question and answer were ruled out.

Q. Do you recollect any conversation Mr. Hertz had with any person, or any conversation you had with him?

A. I heard many conversations of Mr. Hertz with other officers who left for Halifax. It was a promise Hertz made to these men in the name of Mr. Howe, and through Mr. Howe in the name of the English government, to give them commissions in the foreign legion, if they would go to Halifax, if they were military men before, and so on; and when some of them would express doubts on the subject, Mr. Hertz would try and prove that he had really the power to promise.

Q. Anything else?

A. I remember there was some money given to the men by Mr. Hertz.

Q. Which men?

A. To the men who enlisted.

Q. What was money given them for?

A. To pay board to the very day they sailed, from the time of enlistment to the time of leaving.

Q. Who paid for the tickets?

A. I suppose Mr. Hertz—I do not know.

Q. Who gave the tickets?

A. Mr. Hertz did.

Q. For the seventy-eight you took?

A. Yes, sir.

Q. You say you had a hundred in your company; how happened it that you only took that number?

A. Afterwards some men were sent from Philadelphia.

Q. How did it happen that you first had one hundred men, and only took seventy-eight with you?

A. The other parties came on afterwards, and were put to my company as they came on, particularly men from Philadelphia.

Q. What became of this company?

A. It sailed on the 8th of August for Portsmouth, England, to equip for its destination.

Q. (Cards shown witness.) What are these?

A. These are the cards which were given to the men to get a passage on board the boat. Mr. Hertz got the cards; I do not know where he got them from.

Q. What is that on it?

A. It is H.

Q. Whose signature is it?

A. Mr. Hertz's.

Q. What is the meaning of N. S. R. C.?

A. It means Nova Scotia Railroad Company, I suppose.

The ticket was given in evidence ; the following is a copy :

N. S. R. C. H.

Q. Did you take these tickets all the way to Nova Scotia ?

A. Every man had one of these tickets, and they passed him on the boat.

Cross-examined by Mr. Remak.

Q. Did you go to see Mr. Hertz of your own notion, or did anybody request you to go to see him ?

A. I was requested by Dr. Biell to see Mr. Hertz, as I had seen Crampton only a few weeks before.

Q. Did you know Hertz before that time, before Biell mentioned his name ?

A. No, sir.

Q. You did not know him at all ?

A. No, sir.

Q. You had already seen Mr. Crampton at the time Biell spoke to you ?

A. Yes, sir ; Biell told me Hertz had a letter which he had shown him——

Mr. Remak. There is no use saying that. You saw Hertz on the 10th of March ?

A. Yes, sir.

Q. Where did you see him ?

A. At his office, 68 South Third street.

Q. Did you know the business of Mr. Hertz ?

A. Yes, sir ; he was enlisting men for the foreign service ; Mr. Hertz himself said so when I came up there.

Q. Was it not at his office you said people came in and enlisted, and entered their names in a book ?

A. Yes, sir.

Q. (Showing book.) Here is the book presented to you ; do you swear that this is the identical book you saw there ?

A. Yes, sir.

Q. Were all the names here entered by the persons themselves, or by whom ?

A. Not exactly all these names ; many of the men signed their names themselves, and others could not write, and Mr. Hertz, or somebody, wrote down the names.

Q. Now, be so good as to describe this book ; does it contain anything but the names and places of residence ?

A. It contains the names of those men ; most of them I took with me, as my company, to Halifax.

Q. And contains the residence of some ?

A. Yes, sir, of some.

Q. It contains nothing else ?

A. It contained at that time the names of several officers willing to go ; it contains now but those names.

Q. You say you received money from Mr. Hertz ?

A. Yes, sir.

Q. For what purpose?

A. I received money from Mr. Hertz, and was obliged to give him a kind of note, in which I stated I had received so much money, and it would be repaid.

Q. (Showing witness a paper.) Is this paper signed by you?

A. Yes, sir.

The paper was read as follows:

"I received from Mr. Hertz \$5 on my word of honor.

"MAX F. O. STROBEL."

Mr. Remak. The figures are blotted, and it looks as if it had been altered from \$5 to \$25.

Witness. The signature is true, but I believe the 25 is false. I actually received, on my word of honor, from Mr. Hertz \$10, but I never remember having given Hertz a receipt for this \$25 I received on board the boat; I never remember, but there is a possibility.

Q. You stated in your examination in chief that you received \$25 the day you started?

A. Yes, sir, I received \$25 that day.

Q. You state now you do not remember having given a receipt for it?

A. I do not remember; I acknowledge this signature—that might be another note I gave to Hertz, stating I only received \$5. This is my signature.

Q. You received \$25 on that day, and this paper states in number 25?

A. It states here \$25. I do not recollect signing any paper for \$25. I recollect saying to Mr. Bucknell I received that money.

Judge Kane. Is this material?

Mr. Remak. It is for the purpose of showing that money has been loaned to the witness.

Q. You say you were present when several different men came in at different times and signed their names in that book? What were the conversations between Hertz and those persons?

A. The conversation was that he showed the parties the proclamation or advertisement, and he said there is a foreign legion as you see in Halifax; and if you feel able and disposed to enter this foreign legion in Halifax, I will give you the means to go to Halifax as a soldier in that legion—that is, if you are willing to go to Halifax and be enlisted for this foreign service.

Q. Can you swear that Hertz ever said to enlist as a soldier for the foreign service?

A. I can swear that he said he wanted them to go to Halifax for the purpose of enlisting for British service.

Q. Did he pay anything to them?

A. He paid to several of them, but not every one—to some of them he paid one dollar; to some 25 cents, and to some 50 cents.

Q. Do you recollect the names of any of the men to whom he gave 25 cents?

A. To Purde, and several others—their names are in the list.

Q. Were any of those people very poor?

A. Yes, sir, some of them were.

Q. Did you know that these people were actually in want of food?

A. Not in want of food.

Q. Do you believe that these people had any money at all?

A. I believe they had none.

Q. Were they not looking out for work?

A. They had been looking out for work.

Q. And could they get it?

A. They said they could, but as they were detained they must be paid.

Q. They could get work, they said?

A. If they would not be retained.

Q. Did these people use the word retained?

A. They said they could get work if they were not kept waiting here doing nothing, and being promised every day that this vessel should sail for Halifax.

Q. Then these people did not employ the expression retained?

A. Well, they were retained.

Mr. Remak. You have to give the conversation exactly as it took place; be very strict; what language did these people speak?

A. In the German.

Q. Then they had no idea of the word "retained?"

A. We have a word in German that means as much.

Q. What is it?

A. "Augeholten."

Mr. Remak. May it please your honor, that word means detained.

Q. Did not these people mean to say that their time was wasted by being unemployed?

A. No, sir, they said, or meant by saying so, that their time was taken by Mr. Hertz.

Q. Did not some people come into the office who declined to go to Halifax?

A. Not that I remember. Some of them came once, but never afterwards.

Q. What did Hertz say when they declined—if you recollect they did decline?

A. I do not remember that any one declined.

Q. Did Mr. Hertz offer them anything the moment he spoke of going to Halifax?

A. Not at that moment.

Q. Mr. Hertz did not offer them anything when he asked them to go to Halifax?

A. No, sir.

Q. Did he actually ask them to go to Halifax?

A. Yes, sir.

Q. Did not he leave it optional? Did not he represent the matter that they would get employment there?

Witness. Get employment in Halifax?

Mr. Remak. Some employment.

Witness. No, sir, that could not be, because this advertisement was lying on the table, and for that purpose the men came up.

Q. When the men came in, you say Hertz did not offer them anything; when they were ready to go to Halifax, what did Hertz say?

A. Mr. Hertz said, I have a vessel ready for you to start in a day or so.

Q. Did he state for what purpose this vessel would start?

A. For conveying these men to the "foreign legion" at Halifax.

Q. You stated that he gave some of the men one dollar, and some twenty-five cents; to how many of the men did he give anything at all?

A. It is very difficult to say.

Q. Did he give it to twenty?

A. I suppose that is the number.

Q. Have you been present every time he gave these men something?

A. Not every time, but he gave to that many in my presence.

Q. Then you remember that he gave to more than twenty?

A. Not to more than twenty. I cannot say that he gave to more than twenty.

Q. Then you do not know if he gave to any one else?

A. No, sir.

Q. The names you remember mention now.

A. Barrier, Blecher, Brining, Foley, Worrell.

The court here overruled the question.

Q. You stated in your examination in chief that some of the men received money to board?

A. Yes, sir.

Q. How much did they receive?

A. I cannot tell whether Hertz gave three shillings or four shillings; to some he gave three, some four, and perhaps some a dollar.

Q. Did Mr. Hertz ever promise you a commission?

A. Yes, sir.

Q. Where did he promise you?

A. In his office.

Q. In whose presence?

A. In the presence of Mr. Rumberg and Lieutenant Essen.

Q. Did he show you any authority for doing so?

A. I believed he had, because he made me himself acquainted about the letters and orders he had received from the British government, and I showed him my letters, although I never saw his letters. He promised me a commission.

Q. Did Mr. Hertz derive any benefit from all the transactions you know of?

A. I cannot tell.

Q. You remember that you said in your examination in chief, that Mr. Hertz said himself that what he had received did not cover expenses?

A. At that time.

Q. Do you know, from your own knowledge, that Hertz has received, at any other time, any more money?

A. I cannot swear that Hertz received more money than he expended, but I can swear he received money.

Q. Then he did not derive any benefit from his business transactions?

A. I do not know.

Q. As far as you know?

A. As far as I know, no; but I cannot see into his business matters, certainly.

Q. Could Mr. Hertz have any direct benefit from the fact of any of these men going to Halifax?

A. Yes, sir.

Q. In what manner?

A. He would receive \$4 for every head.

Q. Would the \$4 come from the man himself?

A. No, sir; it would be paid by the English government; the man could not pay, but the English government paid \$4 for every head.

Q. Can you say whether any agreement has taken place between Hertz and you, or with any of these men, with regard to the transaction?

A. Yes, sir.

Q. What was the character of it?

A. The agreement was, that I was to take this company to Halifax, and I was introduced to the men of the company as their captain; and I had to bring them up to Halifax.

Q. Did you derive any benefit from this matter? You received money, did you not?

A. I received no money except that necessary to take the men to Halifax, and their tickets.

Q. You received no money?

A. No money for myself, but money to take the men there, for the government.

Q. You received no money for yourself?

A. No money for myself, from the government. What I received for doing this, was the commission.

Q. Did you receive from Hertz any money?

A. I received as a private matter \$10 from Hertz; but I received \$25 to feed the men on the boat.

Q. Then, Mr. Strobel, had you any direct authority from the English government at the time?

Witness. Direct authority to do what?

Mr. Remak. Any direct authority at all. I do not care what it is. Did you hold any commission?

A. Just the commission as promised by Hertz.

Q. You had no commission?

A. I had no commission at that time.

Q. Then you cannot say you were at the time the representative of the English government, or agent of that government?

A. Certainly, I was insomuch an agent that I agreed with the English government to bring men to Halifax.

Q. You considered yourself so?

A. I did not consider, I thought so.

Q. When did you agree with the English government?

A. So early as the beginning of April, with Mr. Crampton.

Q. Did you agree to take the identical men you started with on the 25th of March?

A. No, sir, not those men, but any men.

Q. Then you had no other authority than what you thought you had from Hertz when you took these men?

A. Not for bringing these very men I named here.

Judge Kane. The witness says he had authority from Mr. Crampton to take such men as should be enlisted, and that it was from Hertz that he got the directions of the particular persons enlisted, and who were to be carried on.

Q. Did you make any promise to Hertz in return for the so-called authority he gave you?

A. Yes, sir.

Q. What was the promise?

A. I promised Mr. Hertz that upon arriving in Halifax I would state that Mr. Hertz had sent these men, and that he had a great many more men, and had made arrangements with parties in New York, but was not able to send them, and I was to secure him every man he sent from Philadelphia to Halifax.

Q. Did you ever pay to Mr. Hertz afterwards anything for the trouble he took to send men to Halifax?

A. I did not.

Q. Do you know whether anybody else paid Hertz for the trouble he took on that day, or any other time?

A. I do not know; I know that Hertz received money for the men in New York.

Q. Did you ever see Mr. Crampton in the presence of anybody else?

A. Yes, sir.

Q. Who was present?

A. I saw Mr. Crampton in the presence of Dr. Reuss, for instance, Major Boutz, Sergeant Burgit, and Rose, and others; I travelled with Crampton and Preston in company with other gentlemen up to Quebec from Halifax; these instructions were in the handwriting of Crampton.

Q. I want to know if Hertz ever read these instructions?

A. I do not know whether Mr. Crampton sent him a copy of them or not.

Q. Then you do not know whether he had ever any knowledge of these instructions?

A. They were written after I left here, and I could, therefore, not tell.

MONDAY'S PROCEEDINGS—September 24, 1855.

Horace B. Mann, sworn. Examined by Mr. Van Dyke.

Q. Are you engaged in the Pennsylvanian office?

A. Yes, sir.

Q. (Paper shown witness.) Do you know whether that advertisement was ordered to be published there?

A. As regards ordering the advertisement I do not know anything about it, but that is a copy of the Pennsylvanian.

Q. Do you know anything about the discontinuing of it?

A. Yes, sir, it was ordered to be discontinued by Mr. Hertz; I discontinued it at his order.

Q. Is that the receipt for the advertisement?

A. That is the receipt for the payment of that advertisement; Mr. Magill is the person who received the advertisement; the paper in which it appears was published March 16th, and the receipt is dated March 15th.

The receipt was here read in evidence as follows:

PHILADELPHIA, <i>March 15th</i> , 1855.	
<i>Lieutenant-Governor of Nova Scotia,</i>	
To Advertising in the PENNSYLVANIAN,	
2 Squares <i>for one month</i>	\$5 00
Received payment for the Proprietor,	
WM. MAGILL.	

Max F. O. Strobel recalled. Examined by Mr. Van Dyke.

Q. You have been sworn?

A. Yes, sir.

Q. You are acquainted with the handwriting of Mr. Howe?

A. I have seen it.

Q. What position did he hold in March and February, 1855?

A. He was the general agent of the British government, in the States, for this recruiting.

Q. (Paper shown witness.) Will you look at that paper, and say whether it is in his handwriting?

A. I believe it is Mr. Howe's handwriting; I have seen him write.

The paper was here read in evidence, Mr. Van Dyke stating it was the original of the advertisement which appeared in the papers in regard to this matter. It is as follows:

"The lieutenant-governor of Nova Scotia is empowered by her Britannic Majesty's government to raise any number of men which may be required, to serve in the foreign legion.

"Depots are established at Halifax, and all able-bodied men, between the ages of twenty and thirty-five, who may present themselves, will be enlisted.

"The terms of service will be three or five years.

"Officers who have seen service are eligible for commissions.

"Surgeons, speaking the continental languages, or some of them, will be required.

"Pensions or gratuities for wounds or eminent services in the field will also be given.

"On the expiration of the term for which they enlist, the troops will be sent to their native countries, or to America."

Q. You said you are acquainted with Mr. Crampton's handwriting?

A. Yes, sir.

Q. (Paper shown.) Is that his writing?

A. That is Mr. Crampton's handwriting.

Question by Mr. Cuyler. You have seen him write, you say?

A. Yes, sir.

The paper was here read in evidence, as follows :

“SATURDAY, *January 27*, 1855.

“SIR: I should be happy to see you at any time you may choose to call, to-day or to-morrow.

“I am, sir, your most obedient servant,

“JOHN F. CRAMPTON.

“MR. HERTZ.”

[Envelope.]

Mr. HERTZ,

J. F. C.

Willard's.

Q. (Another paper shown.) Is that also in Mr. Crampton's handwriting?

A. Yes, sir; that is Mr. Crampton's handwriting.

The paper, which was read, is as follows :

“WASHINGTON, *Feb. 4*, 1855.

“SIR: With reference to our late conversation, I am now enabled to give you some more definite information on the subject to which it related.

“I am, sir, your obedient servant,

“JOHN F. CRAMPTON.

“H. HERTZ, Esq.”

[Envelope.]

Paid—J. F. C.

WASHINGTON,

Feb. 4,

D. C.

H. HERTZ, Esq.,

424 N. Twelfth street,

Philadelphia.

Q. Do you know Mr. Wilkins's handwriting?

A. Yes, sir.

Q. Is he provincial secretary?

A. Yes, sir.

Q. (Paper shown witness.) Is that his writing?

A. It is. I have seen him write; that is his signature on the back of it.

Q. Do you know whether Hertz was in Halifax in June?

A. Yes, sir, he was in Halifax in June.

Q. Do you recollect the day?

A. I cannot recollect what day; it was in the beginning of the month.

Q. In whose handwriting is the direction on the envelope?

A. I believe it is Wilkins's, too.

The paper, with envelope, was read in evidence, as follows :

“ PROVINCIAL SECRETARY'S OFFICE,

“ *June 11, 1855.*

“ SIR : I am in receipt of your letter of this date, and am commanded by his excellency Sir Gaspard le Marchant to inform you that in reference to the claim advanced in your communication, Mr. Howe, previous to his departure for England, distinctly stated to his excellency that the moneys which you had received on account more than cancelled any claim that you might prefer.

“ Any instructions given to Mr. Howe by Sir Gaspard will speak for themselves, whilst Mr. Howe will best account for his own acts on his return from England.

“ In his absence, nothing can possibly be done by Sir Gaspard, in relation to yourself.

“ You must consider this a final answer, given by his excellency's command.

“ I have the honor to be, sir, your most obedient servant,

“ LEWIS M. WILKINS.

“ MR. H. HERTZ.”

[Envelope.]

ON HER MAJESTY'S SERVICE.

MR. H. HERTZ.

Provincial Secretary's Office.

Q. You are acquainted with the British secretary of legation?

A. Yes, sir, I have seen him.

Q. Do you know his handwriting?

A. I have seen his writing, but never saw him write. I never had any conversation with Mr. Lumley. I always addressed my letters to Mr. Crampton or Mr. Lumley ; I never received any replies from Mr. Lumley.

The defendant's counsel admit the paper to be in the handwriting of Mr. Lumley, and it is read in evidence as follows :

“ WASHINGTON, *May 31, 1855.*

“ SIR : In the absence of Mr. Crampton, I beg to acknowledge the receipt of your letter of the 20th instant. Although I am not aware that I have had the advantage of making your acquaintance, I beg to inform you, as secretary of her Majesty's legation, that no charge against you, of the nature to which you refer, has been made to me. It is, therefore, superfluous to add that I have never expressed the opinion reported to you as having been used by me.

“ I am, sir, your most obedient servant,

“ T. SAVILLE LUMLEY.”

[Envelope.]

*Paid—T. S. L.*WASHINGTON,
May 31, 1855,
D. C.HENRY HERTZ,
424 North Twelfth street, below Coates,
Philadelphia, Pa.

Q. Did you know the vice-consul at New York?

A. Yes, sir.

Q. What is his name?

A. Mr. Stanley.

Q. Do you know his writing?

A. Yes, sir, I have seen him write.

Q. (Letter shown witness.) * Is that a letter of Mr. Stanley's?

A. Yes, sir.

The letter and envelope were read in evidence as follows:

"NEW YORK, *June 19, 1855.*

"SIR: I am obliged to you for the cutting from the newspaper which you forwarded with the note of the 17th, both being received by me yesterday. I do not understand the spirit evinced by the writer of the newspaper paragraph. I am not yet aware of any United States laws being broken in the matter to which he has reference, and have not the slightest interest therein.

"Regarding your claim against the Nova Scotia government, I have not received any communication from that quarter, as you led me to expect would be the case. As I informed you when in the city, it is not possible that I should be acquainted with the subject; but if so ordered, I shall be happy to remit you the amount.

"I have seen Mr. Mathew, who happened to be in New York, being in hopes that I might procure through him some information which would aid you in this matter; but being unsuccessful in obtaining any, it is utterly out of my power to forward your views.

"Remaining your obedient servant,

"C. H. STANLEY."

[Envelope.]

NEW YORK,
June
19.MR. H. HERTZ,
424 North 12th street,
Philadelphia.

Q. (A card here shown witness.) Do you recollect that card?

A. Yes, sir.

Q. It is written in what language?

A. In German.

Q. Do you know whose writing it is in?

A. It is a card written by Mr. Benas, at the request of Mr. Hertz.

Q. Who was Mr. Benas?

A. He was at that time with Mr. Hertz; I do not know Mr. Benas

himself. He was with Mr. Hertz, and this was brought to me by a man who came up to Halifax and enlisted in my company.

Q. Did he go with you?

A. No, sir; he was sent to my company at Halifax by Mr. Hertz, and he brought this card to me, recommending this man to me as secretary of a company.

Q. This man was enlisted in your company?

A. Yes, sir.

Q. Before you left?

A. No, sir.

Q. He came on after the company left here, then?

A. Yes, sir.

By Mr. Cuyler. Did you see this card written?

A. I could not have seen it, because I was in Halifax, and this man brought it up there.

Q. Do you know Mr. Benas, who signs it?

A. I know him now; I did not know him at that time.

Q. Are you familiar with his writing?

A. I never saw him writing, and cannot say of my own knowledge that this card is in his writing, but it was brought to me from this very man.

Mr. Cuyler objected to the reading of the card in evidence.

It was shown to the jury; but as it was in German, few read it. We present a translation:

“I recommend to you the bearer of this card, Mr. Sporer, an excellent and perfect penman; if it lies in your power to obtain for him a position as clerk in your company, you will thereby greatly serve me.
“M. BENAS.

“By request of H. Hertz.”

Q. Do you know Turnbull?

A. Yes, sir.

Q. What was he in June, 1855?

A. He was at that time an agent for Mr. Crampton.

Q. Where is he located?

A. He was sent to the west, to Cincinnati, to aid Colonel Korpony.

Q. (Letter shown witness.) Is that his letter to you?

A. That is Mr. Turnbull's letter to me from Cincinnati.

Mr. Van Dyke offered the letter in evidence.

Mr. Cuyler objected.

The objection was sustained and the letter ruled out.

Charles Rumberg, sworn. Examined by Mr. Van Dyke.

Q. What is your business?

A. I have been editor of the Philadelphia German Democrat, and I am now editor of a German paper at Pottsville, and co-editor of the Adopted American here.

Q. Will you state whether you have ever been in the army?

A. Yes, sir, I have been in the army of several German states. I have been captain. I came to this country nine years ago.

Q. State whether you ever saw Mr. Crampton?

A. I have not seen Mr. Crampton. I have seen Mr. Mathew.

Q. Will you state what took place between you and Mr. Mathew?

A. After having read the proclamation and resolution of the British government for enlisting able-bodied men for the "foreign legion"—

Q. That is, the one passed in Parliament?

A. Yes, sir; asking for recruiting able-bodied men for the "foreign legion"—I went to Mr. Mathew, and said to him that I could enlist from 400 to 500 men. Well, I made no arrangements in relation to the enlistment with Mr. Mathew; but I gave him a letter to the British minister of foreign affairs in London, and he told me he would transmit it there.

Q. How long after that did you see Mr. Howe?

A. Six or eight weeks after that.

Q. Where did you first see him?

A. He came to my office in Third street, and asked me to agree with him as to the terms for enlisting men for this legion, and I replied to him that I would come on another day to see him for the arrangement of that matter. I went to him, and met there Mr. Hertz.

Q. Where at?

A. Jones's Hotel.

Q. What took place there?

A. After having some conversation with him, I considered it too hazardous and dangerous to go in that concern; and then I retired. I declined to engage.

Q. Did you see him afterwards?

A. Yes, sir; but at that time Mr. Howe promised to give me a commission in the "legion."

Q. Was Mr. Hertz present at that time?

A. Mr. Hertz was present at that time.

Q. What else did he say to you?

A. That was all.

Q. What inducement did he hold out to you in order to get you to go into this business?

A. I did not know at that time precisely that the laws of the United States forbid the recruiting; and not believing it was against the law, I would have gone into it; but after having consulted with many of my friends, I came to the resolution to decline.

Q. Did you see him afterwards?

A. No, I did not see him after that.

Q. (The original draught of the proclamation which Mr. Strobel testified was in the handwriting of Mr. Howe, and is given above—see page 386 for this paper—was here shown the witness, and the question was asked him whether he had ever seen it?) He answered, I have seen that paper before; I have translated it, and it has been inserted in the Philadelphia Democrat, German Democrat, and Free Press.

Q. Who asked you to translate and insert it?

A. Mr. Hertz.

Q. Did you ever go to Mr. Hertz's office?

A. I have been to it once or twice; it was only to see what was going on.

Q. Did you ever go to collect money for his advertisement?

A. No, sir. I think Mr. Morris, the clerk, did that.

Q. What was going on there when you went there?

A. I have seen there many men, but it was not my business to look at it.

Q. Did you ever ask Hertz, or did he ever tell you without being asked, how many men he sent to Halifax?

A. Yes, sir; he told me he sent 100 or so on to Halifax.

Q. Did he say what he sent them for?

A. No.

Q. Did he tell you who took them?

A. It was only in a conversation in the street, and I was not particular.

Q. Did he ever say anything to you in reference to your going there yourself to take the command?

A. Yes, sir, he has told me to go, and I have replied that I would not.

Q. How often did you see Hertz in the presence of Howe?

A. I believe twice.

Q. When was the second time?

A. That was when I declined.

Q. Was Mr. Hertz with Howe when you saw him at your office?

A. No, sir, there was nobody with him.

Q. You only saw him, then, once at your office and once in the presence of Mr. Hertz, at Jones's Hotel?

A. Yes, sir.

Cross-examined by Mr. Remak.

Q. Did you not know Hertz before Howe introduced him?

A. Yes, sir, I have spoken to him.

Q. You have stated that at first you were inclined to go into this matter. Did not you write in your paper articles in favor of the "foreign legion?"

A. No, sir.

Q. Did not your paper contain such articles?

A. I believe not.

Q. Do you not remember that the democratic paper, at whose head you were at the time, had articles against it?

A. I believe it had articles against it.

Q. And were you not yourself in favor of this "foreign legion?"

A. No, sir, I was not in favor of it.

Q. Did you not induce Hertz to put in that advertisement?

A. No, sir; he desired me. I translated it.

Q. Did not you go to Mr. Howe in order to induce him to do something in relation to this translation?

A. Not to my recollection: nothing of the kind.

Mr. Van Dyke here showed witness an advertisement in a German paper, and asked him whether it was a translation of the original paper which was handed to him?

A. It is the translation.

Q. You put that in at whose request?

A. For a month, I think.

Q. Who asked you to publish it?

A. I published it at the request of Mr. Hertz.

Question by Mr. Cuyler. Where did he (Hertz) ask you to translate it?

A. He asked me to translate it and insert it in our paper.

Question by Mr. Cuyler. At what place did he ask you that?

A. I remember not; but I believe it was in his office.

Mr. Cuyler. You are perfectly sure that Hertz asked you?

A. I am sure Hertz asked me to translate it and insert it in the *Free Press* and *Philadelphia Democrat*.

Mr. Cuyler. Did Hertz personally ask you?

A. Yes, sir.

Mr. Van Dyke here gave in evidence the German translation of the original proclamation, as published in the German papers of this city. The original can be found in Strobel's testimony, on page 386.

Thomas L. Bucknell sworn. Examined by Mr. Van Dyke.

Q. Will you state to the court and jury all you know of this matter?

A. Well, on the 18th of March it was I heard that the honorable Joseph Howe, who was either president or director of the railroads in the province, was in New York, and I went on in the 5 o'clock train. I wished to see the procession of the 17th of March, "St. Patrick's day," and I thought I might see both together. I saw him at half-past 11 o'clock, on the 16th, at Delmonico's Hotel. I spoke to him of what I had visited New York for, and he told me he would see me again, and see what he could do about giving me employment as civil engineer. He said, you can be of use to me in one or two matters while in the city; he gave me some ten sovereigns, I think, to go to bank to get changed into American money, and buy some stationery. Well, I bought the stationery, and got the money changed, and went back and gave the money up, and that was the last I saw of him on that day. On the 17th I called again, and he asked me to dine with him. I dined with him about half-past 4, and showed him my testimonials from different engineers. Two or three gentlemen came in while at dinner, and the conversation stopped about what he could do for me. I do not think I saw him again until Monday, and he asked me if in the course of my walks through the city I would call for him at the Metropolitan Hotel, and see if there were any letters for him. I called there and got two letters, and brought them to him; he had gone out for the evening, and I left them with the book-keeper; I forget now whether I sent them up to his room or left them with the book-keeper; I called next day, I think it was on Tuesday, and he asked me whether I would like to go on to Philadelphia and Washington; I said it was all the same to me where I go, for I have nothing else to do; so he gave me a parcel tied up—I don't know whether it was directed or not—to leave with a man by the name of Hertz, at No. 68 South Third street, Philadelphia; I brought the parcel on, and called next morning at No. 68 South Third street, and asked if there was a man by the name of Hertz there; there was a small-sized man in the room, and he said that Mr. Hertz was in the next room, and he would call him; he called him, and he came out and said, I am Hertz;

I then said, the honorable Joseph Howe directed me to leave this with you, and you will please give me a receipt for it; I then left the parcel. That was all the conversation I had with him on that occasion; I left the office, and went with some printed or sealed documents to Washington.

Q. From him?

A. No, sir, from Howe. I did not get any answer to those. I came back again. The sealed documents were directed to Mr. Crampton. He, Mr. Crampton, asked me when I left New York. I told him about leaving this parcel at Hertz's, and he told me he would recommend me to call back that way and get it again.

Q. You are sure it was he?

A. Yes, sir, I am certain. He told me to call that way again. I called at Hertz's office on my way back, and gave him the receipt I had taken for the papers, and took away the papers I had left at his office. That was the last I saw of Hertz until I saw him at the office.

Q. What papers were they?

A. They are the printed circulars that came from Halifax; the circulars with the British coat-of-arms upon them.

Judge Kane. The witness spoke of that as an enclosed parcel.

Witness. There was no cover on it; there was only a piece of twine around the parcel, and I could see what they were. I took them when I came back, and rolled them up myself, and brought them back to New York. [Circular shown witness with the British coat-of-arms upon it, a copy of which is already published. See copy on page 356.]

That is the circular I saw.

Q. You went back to New York after that?

A. Yes, sir.

Q. Did you see Howe?

A. Yes, sir.

Q. Were you there when Mr. Strobel came?

A. Yes, sir: I saw Mr. Strobel.

Q. Did you give him any money?

A. No, sir, not to Mr. Strobel. At the request of Mr. Howe, I gave \$100 to Mr. Hertz.

Q. To Mr. Strobel and him together?

A. Yes, sir.

Q. At the Astor House?

A. No, sir, at Delmonico's.

Q. What did Hertz do with the money?

A. I do not much mind.

Q. Did you see what he did with it?

A. I saw him get a receipt for part of it from Mr. Strobel; I believe it was \$80.

Q. Did you see the men that Strobel had there?

A. No, sir.

Magnus Benas affirmed. Examined by Mr. Van Dyke.

Q. Where do you live?

*A. No. 218 North Fourth street. My business is pocket-book making. I know Hertz.

Q. State what you saw in reference to these enlistments?

A. I got acquainted with Hertz about eight days before he was arrested. I was down at the wharf as the steamer Sanford left, and I was in his office on the same day, and afterwards. I got in his employ about a week afterwards.

Q. You got in Hertz's office?

A. Yes, sir, in Mr. Hertz's employ.

Q. About eight days before he was arrested?

A. No, sir, after he was arrested; about the 2d of April.

Q. Still in the same office?

A. Yes, sir.

Q. Well, then, what did he engage you for?

A. Well, for transacting his business. It was a commission office.

Q. Did you write that card to Halifax at his request?

A. I wrote that card on my own account. It was for an acquaintance of mine, and I wrote it on my own account.

Q. Do you know anything about the office for recruiting, and Mr. Hertz's connexion with it?

A. Well, I heard something, but I did not know anything before.

Q. Did he tell you anything about the office kept by the Baron Von Schwatzenhorn? State what you know about Hertz engaging Von Schwatzenhorn?

A. There was a conversation between the Baron Von Schwatzenhorn and Hertz.

Question by Mr. Cuyler. In your presence?

A. Yes, sir; they met at 68 South Third street, and agreed that Von Schwatzenhorn should see to getting the men, and Hertz procured the vessels to bring them to Halifax; and accordingly Hertz sent me at different times to the office of the English consul to inquire about vessels loading for Halifax; merchant vessels—mostly schooners.

Q. That was, for the men whom Baron Von Schwatzenhorn was getting?

A. Yes, sir. I was about four or five times in the office, and got about five vessels; two of the vessels I recollect the names of; they were the "Gold Hunter," and "Bonita."

Q. Were men sent in these vessels?

A. Yes, sir; they were sailing-vessels, direct for Halifax.

Q. Were they English vessels?

A. Yes, sir, I guess so; I do not know sure.

Q. Did you see any of the vessels?

A. Yes, sir, I saw them all.

Q. Did you see the names of any of them?

A. Yes, sir, I told you.

Q. Where did they hail from?

A. I do not know.

Q. How many men did you ever see off in a vessel?

A. I saw them off, once four men, and another time six, but never more than six were in one vessel.

Q. What was the character of these vessels?

A. They were schooners.

Q. Was it at the request of Hertz that you went to the British consul's to know when merchant vessels were going to sail, for the purpose of sending the men Baron Von Schwatzenhorn had engaged?

A. Yes, sir.

Q. Where did the Baron Von Schwatzenhorn keep his office?

A. He lived at the corner of Fourth and Brown.

Q. This was after the arrest of Hertz?

A. Yes, sir, it was.

Q. Do you know at whose request the Baron commenced to engage men?

A. I do not know.

Q. (Card shown witness, a translation of which may be found on page 390, ante.) Look at the bottom of that card, and say if you have not stated at whose request you wrote it?

A. I did it of my own accord, and wrote that down to let Mr. Strobel know that I was in the employ of Hertz.

Q. Is it not written "at the request of Mr. Hertz" at the bottom?

A. I wrote it so, but it was on my own account.

Q. Do you know Schuminski?

A. Yes, sir, I saw him. He was not engaged at the request of Mr. Hertz, but of the Baron Von Schwatzenhorn. He was with the Baron.

Q. They acted together?

A. Yes, sir.

Q. Do you know how many men the Baron got altogether?

A. No, sir, I do not know; I guess about twenty or twenty-six, I cannot tell for sure.

Q. Did Hertz ever tell you how many men he sent altogether?

A. No, sir.

Cross-examined by Mr. Remak.

Q. Mr. Baron Von Schwatzenhorn was not requested, then, by Mr. Hertz to send men?

A. No, sir.

Q. Do you know Winsor and other gentlemen who procured the vessels?

A. I do not know anything about it.

Q. Was Mr. Hertz exactly in the position of Winsor and other gentlemen who had vessels at their disposal?

A. I do not know. Mr. Hertz sent me to the English consul to inquire about vessels loading for Halifax—that is all I know. I know they were for sending the men to Halifax that the Baron Von Schwatzenhorn procured.

Q. Did you not know that the Baron was indicted in this court?

A. Yes, sir, I knew that.

By Mr. Van Dyke.

Q. Do you know where he is now?

A. In Halifax.

Q. What is he doing?

A. I do not know.

Charles Burghthal sworn. This witness was a German, who could not speak English, and Mr. Theodore H. Oehlschlager was sworn as interpreter.

Examined by Mr. Van Dyke.

Q. Where are you from?

A. From Vienna.

Q. In what service have you been?

A. Military.

Q. In what military service?

A. The Austrian.

Q. What official position did you hold?

A. I was a major and lieutenant-colonel in the engineer service.

Q. When did you come to this country?

A. The 28th of September, 1848.

Q. Where had you been located with your command before you came here?

A. In Hungary.

Q. At what place?

A. At Komorn.

Q. Did you at any time see Mr. Crampton in reference to recruiting for the British government?

A. Yes, sir.

Q. State when you first saw him, and how you happened to go to see him?

A. I was engaged as superintendent on the Panama railroad, but, being sick, returned to the United States and went to see Mr. Marcy and Mr. Cushing and other gentlemen, and when in Washington became acquainted with Captain Strobel. I knew Mr. Strobel previous to this, five years before. Mr. Strobel informed me that Mr. Crampton was seeking officers for this business. In the end of February I went out with Mr. Strobel to see Mr. Crampton. I went to Mr. Crampton's with Mr. Strobel; he was not at home; he was at a dinner party at Mr. Marcy's. I left my card there, and went to Baltimore to my family. Four or five days afterwards I received a telegraphic despatch from Mr. Crampton requesting me to return to Washington. The next day I did so. I went over there, and was with Mr. Crampton, and held a conversation of over an hour with him relative to this recruiting business. He made me a proposition requesting me to enter the regiment as colonel. I observed to him that I would not enter the service unless there was a perfect security as to my getting a commission, as I did not wish again to enter the service of a despotic power.

Q. What do you mean by "perfect security?"

A. I mean a commission from the Queen, as no one else was able to give a commission.

Q. What else occurred?

A. Then I came to Philadelphia in the beginning of March, and saw Strobel here; I also made the acquaintance of Mr. Hertz; about the 10th or 12th of March, Mr. Howe came here and visited me.

Q. Did Mr. Howe call on you of his own accord?

A. He looked for me and visited me of his own accord, having heard from Mr. Rumberg that I was here.

Q. State the conversation between Mr. Howe and you?

A. He made the same proposition. He stated that he had officers here, in Baltimore, in New York, in Chicago, and in different parts of the country. He then told me that he would obtain for me a commission; that he had authority from Mr. Crampton so to do. I refused the offer, having other employment here at the time. Afterwards Mr. Howe visited me with two or three other gentlemen, and invited me to Jones's hotel. I went to him and dined with him and these other gentlemen. I informed him at dinner of my opinion in relation to this recruiting business; that it had been forbidden in the United States. He showed me two placards, one in German and the other in English, and also a journey card and ticket, and told me that he did not think he could be laid hold of in the matter.

Mr. Remak. He said that he felt certain that nothing could be done to him?

A. That nothing could be done against him in the United States. He also requested me, if I came to New York, to visit him at Delmonico's hotel; I went there, but did not meddle any further in the matter, nor go to see him.

Q. Did you at any time see Mr. Hertz, or have any conversation with him?

A. I saw Mr. Hertz very often when I came to see Mr. Strobel.

Q. Where at?

A. Mr. Hertz's office, in Third street.

Q. What was he doing?

A. I do not know; he was writing; people came there for him—they came to see him.

Q. Did Hertz have any conversation with you?

A. I said nothing to him; I simply saluted him.

Q. Had he any conversation with you in reference to recruiting men?

A. Yes, sir; I think he spoke of it.

Q. What did he say?

A. He said he sent people to Halifax, but not for military service; that he had a commission to do so.

Q. What did he send them for?

A. I had my opinions as to why they were sent there, but I did not tell him, nor did he tell me.

William Budd, sworn. Examined by Mr. Van Dyke.

Q. Are you acquainted with Mr. Hertz?

A. Since the 13th of March.

Q. Where were you made acquainted with him?

A. I was introduced to him as the agent in this city for the recruiting for the "foreign legion."

Q. State what took place?

Judge Kane. What was the character of the introduction?

Witness. He was introduced to me as the agent by my friend, Mr. Strobel. We went down there one morning, and, after some preliminary conversation between Hertz and Strobel, he introduced me to him. Strobel remained in the outside room, and he asked me whether

I would go to Halifax. He said that he was agent of the foreign legion, and asked me whether I had called to receive information about it; I told him I had; he then told me that commissions were to be issued for men who would go on there, and he supposed that I would get one; I then gave him my address, and he requested me to call again, and he would let me know when the first expedition started—to stop in every day and see him, and see what was going on; I did so. He engaged me to go on there for the purpose of obtaining a commission.

Q. State the conversation fully, that occurred between him and you, in reference to your going there?

A. Well, we had a great many conversations; almost every day we talked about it.

Q. When did you first agree with him to go to Halifax for the purpose of obtaining a commission? State the conversation that then took place.

A. I did not agree on the first interview; I told him I would think about it.

Q. What did he say at that interview?

A. He promised me a commission.

Q. Did he ask you to go with that view?

A. Yes, sir, he did.

Q. And you told him you would think about it?

A. Yes, sir.

Q. What next took place?

A. After two or three days, he asked me if I had made up my mind; I told him yes, I would go to Halifax, and see what took place when I got there. He then intended to send me with Captain Strobel, but I concluded not to go; there were not men enough going, and I preferred to hear from him, and hear how he got on when he got there. It was on a Sunday when he started, and I did not go with him.

Q. What did you do from the Sunday up to the time you started?

A. On Monday, Hertz was in New York.

Q. Who had charge of the office while he was gone to New York?

A. Bosschart and myself were there, and we took several persons down who came in there.

Q. Did you do that at the request of Hertz?

A. We did it at his request.

Q. Who was Bosschart acting for?

A. I understood he was acting for Hertz.

Q. Did you raise any men in that time?

A. About twenty-five or thirty.

Q. What did you do with them?

A. The day before we started they all came there, and we gave them tickets, and told them to be down to the New York boat next morning. I went down there after I received instructions from Hertz where to go to in New York.

Q. What instructions did you receive from him?

A. He told me to go to Delmonico's hotel, and call and see Bucknell. We started, and did not get any further than the navy-yard, when we were arrested.

Q. You took the men?

A. I did not take them ; they were down on the boat.

Q. They were in your command ?

A. I had no real command ; I was considered as leader of the party.

Q. By arrangement with Hertz ?

A. Yes, sir.

Q. How many had you ?

A. About thirty when we started. I only saw twelve when the arrest was made. I think there were thirty. It was on a Wednesday. I am not sure whether it was on Wednesday following the Sunday that Strobel went on with men.

Q. Did you see the men go on the boat ?

A. I did, sir, and told several of them to hurry up, or they would lose their passage. I took the tickets from them after we had started down the river.

Q. What boat were you on board ?

A. The Delaware or Sanford—one of the New York line ; the Delaware, I think.

Q. (Tickets shown witness, same as copied on page 380.) State whether those are the tickets used ?

A. I do not know ; tickets like those the men had ; and after they got on the boat, the captain told me to muster them and take them up.

Q. They got those tickets from Mr. Hertz and yourself, you have said ; where did you get the tickets you gave them ?

A. From Mr. Hertz ; and when the tickets were taken from them, I gave them other tickets which the clerk of the boat gave me.

Q. Who settled with the boat for those tickets ?

A. I do not know.

Q. You started in the boat, and were going down the river ?

A. Yes, sir.

Q. What happened then ?

A. When I mustered them, and found there were so few, I was looking for the rest, when Mr. Jenkins came up to me and told me he would like to see me—that he had a warrant for me, and the marshal would be up alongside in a steamboat in a few minutes ; I told him, very well. They searched me for papers, and brought me up to the office ; I do not recollect the names of any of the company.

Q. Had you a muster-roll ?

A. I had.

Q. Where is it ?

A. I rather think I tore it up when I was arrested.

Q. (Book containing the names of the men who enlisted at Hertz's office shown.) Do you know that ?

A. Yes, sir.

Q. What is it ?

A. I cannot say exactly whether it is a part of Strobel's company or mine—I rather think it is mine ; several of the men who had enlisted to go with Strobel's company did not go with him, but went with me, and this list is part of Strobel's and part of mine, I think ; I do not know whose writing it is in ; Mr. Hertz gave me the list, and I suppose he wrote it ; I have seen the book in Mr. Hertz's office.

Q. (Paper shown witness containing a list of names.) Do you know if that was the list of your company ?

A. I think it was, to the best of my knowledge, and I think I made those marks on it. I had no list besides this.

Q. (Another paper shown witness similar to the first.) Is that a copy of this?

A. Yes, sir, I expect so.

Mr. Van Dyke here offered in evidence the list of names which the witness identified as containing the names of the members of this company, from which some of the bills had been drawn. The list is read in evidence.

Q. Do you recollect the names of James Johnson or Peter Muhn?

A. I do not.

Q. Do you recollect Mr. Bucknell coming into the office with the handbills?

A. Yes, sir.

Q. Do you know whether Mr. Hertz took them, and what he did with them. (Bill containing the British coat-of-arms shown witness, same as copied on page 114.) Is that the bill?

A. Yes, sir.

Q. What did Mr. Hertz do with them?

A. Several were stuck up around the office and on the outside, and several were sent to be distributed. I understood they were sent around to the lager-beer saloons.

Q. What became of the bills?

A. Mr. Bucknell took some away, and the rest were burned.

Q. How did that happen?

A. I went in one morning and saw some excitement; they were shoving the papers in the stove, and they told me that Mr. Bucknell had taken the rest of them away with him.

Q. Did you ever see Mr. Perkins in the office?

A. No, sir.

Q. What did Mr. Hertz tell you was to be the destination of the men you took?

A. Halifax.

Q. What were they to do there?

A. To enlist in the foreign legion, if they were found physically competent.

Q. Was there a physician at the office for the purpose of examining men that came there?

A. No, sir.

Q. Do you know what he was paid for getting these men?

A. I do not know the exact agreement.

Q. Did you ever see any telegraphing or letters written by Mr. Hertz?

A. Yes, sir.

Q. State what the telegraph contained?

A. I saw him write a telegraphic despatch to Bucknell; he told him to wait.

Q. Did you see any letter written by Hertz?

A. Yes, sir.

Q. State what it contained?

Mr. Cuyler objected.

Q. 'To whom was the letter addressed?

A. To Mr. Bucknell.

Mr. Bucknell was here recalled.

Q. Have you got that letter written by Mr. Hertz?

A. I never remember his sending one.

Q. Did you ever receive the telegraphic dispatch he sent you

A. Not that I can remember.

Mr. Budd's examination continued.

Q. State what was in that letter.

Mr. Cuyler objected.

Q. Where did you last see the letter?

A. On Mr. Hertz's desk.

Q. Who was at the desk at the time?

A. Mr. Hertz himself; he was writing at the time.

Q. Have you seen it since?

A. No, sir.

Q. Do you know whether it was ever put in the post office?

A. No, sir.

By Mr. Cuyler. Have you any knowledge of it, except that it was a simple sheet of paper on which he was writing?

A. Yes, sir, he informed me of the nature of it, and read part of it to me.

Q. By Mr. Van Dyke. Did he give that letter to you after it was written?

A. No, sir.

Q. You have no knowledge of what became of it?

A. No, sir.

Q. Go on and state, to the best of your knowledge and recollection, what it was that Mr. Hertz wrote on that sheet of paper.

A. Mr. Hertz was writing, and I was waiting in the outer office; he asked me how I spelt my name, and told me that he was writing about me, and stating that I was coming on next day; I then went around to where he was writing, and he again asked me how I spelt my name, and I looked over his shoulder and saw he was writing to the agent in New York that I was coming on with men, and he hoped, he wrote, that he would keep his word and send him on money at the rate of four dollars for superior brands, and two dollars for inferior brands.

Q. What did he mean by superior and inferior brands? did he give you to understand?

A. No, sir, he did not. I understood this perfectly; it meant men.

Q. Did you see him writing any telegraphic dispatch?

A. I saw him write a telegraph, asking whether I should come on next day or not; I forget who took it to the office.

Q. Was there anything in it besides that?

A. He did not use my name; he asked whether he should send twenty or thirty parcels next day.

Q. Do you know whether he got an answer?

A. Yes, sir.

Q. What was the answer?

A. "Yes." It was signed "B." I think it was "Yes, all right." It was in the affirmative. He then told me to get ready to go next morning.

Q. Did he say anything to you in reference to getting directions in New York as to what to do?

A. He told me I would get directions for money or assistance from the agent at Delmonico's hotel to proceed on to Halifax.

Q. Did he mention the name of the person there?

A. He asked me whether I would know Bucknell again, and I told him yes.

Q. Did Hertz give you any money before you left?

A. No, sir.

Q. Had you any conversation with him after your arrest?

A. Oh, yes.

Q. What was it?

A. He said so much, I cannot state it.

Q. State what he said in reference to this recruiting business after you were arrested.

A. After they had arrested me the marshal went on shore and arrested Hertz, at his office, and they kept us in the Delaware a couple of hours, until they had preparations made for our reception. The deputy marshal kept the boat out, and when we came up to the office I found Mr. Hertz here. He said, "All right; I will bail you out;" and I did not think anything more about it until I was committed.

Q. Did he say anything about remaining quiet?

A. Not then; not until the latter part, when I had some difficulty in procuring bail.

Q. What did he say to you then?

A. He said keep quiet; I will have you out. He afterwards said something about the matter; it was to keep my mouth shut, it would be all right; I would be well paid for it.

Cross-examined by Mr. Cuyler.

Q. When was it you were arrested?

A. I cannot exactly remember the day, but it is very well known; I think it was in the latter part of March.

Q. Was there any previous communication between yourself and the United States officers before the arrest?

A. None whatever.

Q. This arrest was not, then, in consequence of any conversation between yourself and the authorities, directly or indirectly?

A. No, sir.

Q. Your arrest was a complete surprise to yourself?

A. Yes, sir, to me; I was totally unprepared for it.

Q. Where did the conversation take place when he told you to keep your mouth shut?

A. Once down in the prison, and once in the commissioner's office.

Q. By Mr. Remak. In what country were you born?

A. I decline answering that question, as it implicates myself. I have been advised to decline answering it.

Q. By Mr. Van Dyke. Did you ever state under oath where you were born?

A. Never.

Q. By Mr. Cuyler. Do I understand you to say distinctly that to answer the question, where you were born, would involve you in a criminal prosecution?

A. No, sir; but to answer whether I am a citizen or not would involve me in a prosecution.

Q. By Mr. Remak. Have you not been arrested and held to bail before the United States Commissioner Heazlitt, on the charge of having retained and hired men for the foreign service?

A. I believe so; that is the charge on which I was arrested and held to bail for a further hearing.

Q. And were you not, on the 28th of March, 1855, a defendant before Commissioner Heazlitt; that was, the day you were arrested?

A. Yes, sir.

Q. Did you not turn state's evidence on the 28th of March, against Hertz?

A. I believe that was the first day I gave evidence.

Q. Did you not say before the United States commissioner that Hertz had promised you money in case you would keep your mouth shut?

A. I did so at that time.

Q. Did you not receive that money because you were in very destitute circumstances?

A. No, sir, I did not.

Q. Had you any money in your pocket the time you were in prison?

A. I had.

Q. How much?

A. I had sufficient.

Q. You stated in your examination in chief that Strobel introduced you to Hertz as an agent of the English government; why did you not say so before the United States commissioner?

A. I said so; I do not know whether I used the exact words, but to the same sense.

Q. It is here, in the published report of the proceedings, that you said, "I was introduced to Hertz about the 15th of March, by Mr. Strobel; was introduced to Hertz as the person who would give me all the information about organizing the foreign legion in Nova Scotia." Did you not say that?

A. Yes, sir.

Q. You said to-day that you were introduced to him as the agent of the English government?

A. For that purpose.

Q. Did you or did you not state before the United States commissioner that Hertz was introduced to you as the agent for the English government? You say now that he was introduced to you as the agent of the English government?

A. He was introduced to me as agent appointed in this city by the government for whom the foreign legion was to be raised.

Q. You said that he was introduced to you there as the person who gave the information?

A. In that capacity.

Q. Did you not employ the word agent?

A. I do not recollect it.

Q. Did you not say before the United States commissioner that it was left optional to any person coming into the office whether he would go to Halifax or not, or what he would do there?

A. I said that, of course, it was left optional with the recruits to go to Halifax, but after they got there force was to be used to induce them to enlist.

Q. Did you then state to the United States commissioner that Hertz was the agent to enlist those persons for foreign service?

A. I did not say so.

Q. Did you not state to the United States commissioner that Hertz sent men to Halifax, and it was immaterial to him what they were going to do there?

A. I do recollect that Hertz sent them to Halifax for the purpose of being enlisted in the foreign legion; of course, he had nothing to do with them after they got there.

Q. Do you remember the 31st of March, when Richard Vaux was your counsel, and when Benjamin Rush made that great speech; were you not a defendant at the beginning of that period?

A. I do not know.

Mr. Van Dyke. There is no dispute about it. He was a defendant, and was discharged by the commissioner by my direction.

Mr. Remak. It is for the jury to know; I desire to know whether or not the witness, on the 31st of March, was a defendant, and had made up his mind to turn state's evidence at the time?

Mr. Van Dyke. I discharged him for the purpose of using him as a witness.

Mr. Remak. I desire the answer of the witness.

Witness. I think I made up my mind; I think so; I am not positive.

Q. Did not Mr. Hertz say to you that he had no power whatever to give commissions?

A. He said he had not power to issue commissions here.

Q. He said he had no power to give any commissions?

A. Here.

Q. Do you believe he had any power to do so?

A. I really do not know.

Q. Was Mr. Strobel present when you conversed with Mr. Hertz?

A. On some occasions. On the first occasion he was present during only the first part of the conversation.

Q. Who else was present?

A. No person.

Q. Did not you desire to see Mr. Hertz yourself?

A. After I was informed that he was the general agent of the English government, I did.

Q. Had you a desire to enlist in foreign service?

A. No, sir, I was not going to enlist; I was to receive a commission, not to enlist.

Q. And you say Hertz did not promise you any commission at all?

A. I did not say so. I said he promised me that the fact of my going on there would insure me a commission when I got there.

Q. He had not power to give one?

A. Not here.

Q. From whom did you receive tickets?

A. From Mr. Hertz.

Q. What were the tickets for?

A. To give to those men I was going to take on, to get their passage. Nothing else was given to the men.

Q. You state, I think, that able-bodied men could be attested in Halifax, if they proved physically competent?

A. Yes, sir.

Q. Did you hear Mr. Hertz say at any time that "physically competent" men would be received at Halifax?

A. No, sir, not these exact words; he has said, if they were sound, and has asked me if they were all right.

Q. Why did not you say that before the United States commissioner?

A. I suppose I was not asked; I do not know the reason I did not.

Q. Did not your examination before the United States commissioner last for some time—for two hours?

A. I do not know: it lasted for some time; I could not exactly say what time.

Q. Were you not asked at the time all you knew about it?

A. I was, but I may have forgotten some particulars; I had heard so much that I could not remember exactly all.

Q. How comes it that you remember it now, and not then?

A. There is some conversation which I related then that I cannot remember now.

Q. Who have you had conversations with in the meantime about this proceeding—that is, from the 31st of March to the 23d of September?

A. With a great many persons with whom I am acquainted; I merely talked the matter over.

Q. Were not you very partial to carrying on the war in Europe against Russia, and for that reason you wanted a commission?

A. I do not know, sir; I never remember expressing my sentiments; I wanted to go there to have a fight, and I did not care which side I went on.

Q. Have you not changed since that time in regard to the war in Europe?

A. No, sir, not in the least.

Q. You are now on the Russian side?

A. No, sir, I am not on either side.

Mr. Van Dyke here stated, that as the attorney for the defence (Mr. Remak) had seen fit, in order to impeach the testimony of Mr. Budd, to read a part of his testimony before the United States commissioner, in justice to Mr. Budd, he deemed it proper, in corroboration of the testimony of the witness, to read the whole of the testimony before the commissioner, that the jury might see that there is no discrepancy

in the two statements. (Mr. Budd's testimony before United States commissioner Heazlitt is here read by Mr. V.)

John Jacob Bosschart, sworn. Examined by Mr. Van Dyke.

Q. Do you know Mr. Hertz?

A. Yes, sir.

Q. How long have you been acquainted with him?

A. I guess I got acquainted with him last March.

Q. Where did you first get acquainted with him?

A. I do not know exactly whether I got acquainted with him at my own house or first at his office, No 68 South Third street. I think it was at my house. I was in the habit of attending his office during the month of March.

Q. State all that took place between you and him, and between him and other persons, in relation to enlisting for the foreign legion?

A. I was first made acquainted with the business by Mr. Leob. He told me that Mr. Hertz had entered into the business of recruiting for the British foreign legion. Some time afterwards, Dr. Biell, who was boarding with me at the time, told me about it, and I soon after saw an advertisement in the *German Democrat, Pennsylvania*, and *Ledger*, that they wanted men for the British foreign legion; that every one who chose to go to No. 68 South Third street would learn the particulars. Dr. Biell and Aschenfeldt went down there, and I went too, to see what was going on; I saw the officers and men going there, and spoke to Mr. Hertz about this foreign legion, and about their pay and commissions. Some of them signed their names in the book, and some of them were taken down by Hertz himself.

Q. What was the character of the conversation which took place between Mr. Hertz and the men when they came up there?

A. The men came in and generally asked if that was the recruiting office, or office to enlist men for the foreign legion; the reply generally was that that was no recruiting office, and that they could not be enlisted there, but if they chose to go to Halifax they might be enlisted there; then he showed them the handbills, which stated that \$30 bounty was given, and \$8 a month to the men; he said that it was in his power to give them a commission.

Q. (The handbill shown witness containing British coat-of-arms, already published, page 114.) Is this the kind of handbill which he showed them?

A. Yes, sir.

Q. What did the men say they wanted to go to Halifax for?

A. They wanted to go to Halifax to serve in the foreign legion—that is, the men who came to the office.

Q. Did he engage them to go there for that purpose?

A. As I understood, he engaged them to go for that purpose.

Q. To enlist when they got there?

A. Yes, sir.

Q. And they told him that that was their intention when they got there?

A. Yes, sir, they told him that.

Q. How long were you with him in that office?

A. I was there every day from the beginning of the business until we were arrested.

Q. Do you recollect any physician who examined the men?

A. Well, I recollect that Dr. Biell examined some of them.

Q. Do you know what Mr. Hertz was to get for sending on these men?

A. No, sir.

Q. Do you know who employed Mr. Hertz to do this business?

A. I was told Mr. Howe employed him.

Q. Who told you?

A. I do not recollect who told me.

Q. Do you recollect Mr. Hertz ever saying anything about it?

A. I heard Hertz talk frequently about Howe, but cannot recollect distinctly that he said that Howe employed him.

Q. Did Hertz, in speaking of the manner in which he was employed to conduct this business, speak of Howe as being connected with his being employed?

A. Yes, sir.

Q. Did Mr. Hertz ever say anything to you about Mr. Crampton having employed him?

A. He told me he had seen Mr. Crampton on the subject.

Q. What did he say had taken place between him and Mr. Crampton?

A. He did not say what had taken place between him and Mr. Crampton—not that I recollect.

Q. You recollect the departure of Captain Strobel and his company?

A. Yes, sir.

Q. Were you at the wharf at the time?

A. Yes, sir.

Q. Was Hertz there?

A. Yes, sir.

Q. To assist in getting them off?

A. Yes, sir.

Q. Did he engage that company to go to Halifax?

A. Yes, sir.

Q. For what purpose?

A. For the purpose of enlisting in the foreign legion, as I understood.

Q. Do you know whether he went to New York to make arrangements for sending that company from New York to Boston?

A. That company started from here on Sunday morning; at 10 o'clock, and Mr. Hertz went to New York on Sunday night, in the half-past one o'clock train, to make arrangements to see that the men got off from New York; he returned to this city on Monday night or Tuesday morning; I saw him on Tuesday morning again in the office.

Q. While he was away who had charge of the office?

A. I had charge of the office.

Q. Were you directed to conduct the business for him while he was away?

A. Yes, sir.

Q. And those men who were enlisted during the absence of Hertz, on Monday, were engaged by you at the direction of Hertz?

A. Yes, sir; I took the names on a piece of paper as directed, and

told the men that Hertz would be back on Tuesday, and find a vessel to bring them on to Halifax.

Q. Why did you not take the names in the book during his absence?

A. I guess I was directed by Hertz to take them down on the paper.

Q. (Paper shown witness.) Is that in your writing?

A. I could not say whose writing it is—some of it is written by me; two of the names are written by me, Robert Korn and Peter Sable; it is the list which was kept in the office; that list contained the names of those who engaged to go.

Q. (Another paper shown.) Is that another list of the names kept in the office?

A. Yes, sir; there is none of my writing on that.

Q. (Book containing the names of those who enlisted, which has already been partly published, shown.) Look at that book and say whether you see any of Hertz's writing in it?

A. The names on the first page, I think, are all written by the men; on the second page also; and on the third page some of them are written by Hertz.

Q. (List of officers in the back of the book shown witness.) What is that?

A. That is a list of the officers. It is in Mr. Hertz's writing. It contains the names of Strobel, Esson, Shuman, Biel, Lisepenny, Budd, Aschenfeldt, Riter, and Anglere. I know those men engaged to go as officers—some of them as non-commissioned officers, and some of them as commissioned officers.

Q. Do you know what pay Mr. Hertz got for this?

A. No, sir.

Q. (Tickets shown.) Did you see many of this kind of tickets about the office?

A. Yes, sir, there were a great many of those tickets.

Q. Did the men who went in Strobel's company get any tickets?

A. I guess so; I am not certain.

Q. (Another book shown.) Do you know that book?

A. I saw that book once there.

Q. Whose writing is that in it?

A. I guess it is the writing of a man in the employ of Mr. Hertz, Mr. Holm. I do not know exactly, but I think so.

Book read in evidence, from which it appeared that Hertz was debited with \$750, and credited by cash with \$300, and then charged with 758 tickets.

Q. Do you know who he got that cash from?

A. No, sir.

Q. (Some handbills were shown witness, same as on page 114, ante.) How many of those handbills did you see about there?

A. I could not tell how many. I saw a package of them; Mr. Bucknell brought them.

Q. Were any of them posted about?

A. Yes, sir.

Q. By whom?

A. I cannot tell.

Q. Who directed it to be done?

A. Mr. Hertz.

Q. Do you know who paid the German Democrat for the advertisement of this call?

A. Mr. Hertz did.

Q. Where did he pay?

A. In his office.

Q. Who called for it?

A. The clerk of the Democrat, Mr. Morris.

Q. Did you see him pay?

A. I saw him pay.

Q. You were arrested at the office?

A. Yes, sir.

Q. With Mr. Hertz, on the morning that the steamer started?

A. Yes, sir.

Q. Was it before or after the men were arrested?

A. On the very same day.

Q. It might have been earlier in the day or later in the day?

A. It was after the men had started. Mr. Budd was put in command of them.

Q. Do you recollect the list of the names of those who went with Mr. Budd?

A. I think that it is the last list shown me, but I am not sure of it.

Q. Do you know whether all those who went with Budd were engaged by Hertz to go with him?

A. They were engaged by Hertz to go to Halifax.

The witness was here questioned by Judge Kane as to the larger book which he had identified as containing a list of the names of persons enlisted.

Q. Was anything written in this book on the page preceding that containing the name?

A. No, sir; it is a list of officers, with their rank.

Q. It has been cut out?

A. Yes, sir; the list of officers is cut out.

Q. It was the list of officers, with their rank?

A. Yes, sir; they put their names down, and the rank they were to hold there was put down by Hertz. I mean military rank.

Q. That was all on the page cut out?

A. Yes, sir; there are two leaves cut out; one was for the commissioned officers, and one for the non-commissioned officers; I recollect there is a list of officers written in the back of the book after they were cut out, and that was just a memorandum.

Dr. Peter Joseph Reuss, sworn. Examined by Mr. Van Dyke.

Q. You are a physician?

A. Yes, sir.

Q. What country do you belong to?

A. Hesse; I have been in this country this 26th of September is four years.

Q. Will you state whether you came to Philadelphia in March or April last, and for what purpose?

A. I came to Philadelphia for the purpose of going to Halifax; I

was to go to New York, and thence to Montreal ; I came here induced by a proclamation in the Philadelphia German Democrat ; I went through here to New York, and from New York to Halifax.

Q. Did you stop at Hertz's here?

A. No, sir.

Q. Why not?

A. Mr. Remak objected.

Q. Had Hertz been arrested at the time you arrived here?

A. I do not know that, because I did not stop in Philadelphia ; I went to New York and Montreal, and then to Boston, and from Boston to Halifax in the Africa.

Q. Is that the steamer?

A. No, sir, the barque Africa.

Q. When you got to Halifax, where did you go, and who did you see?

A. I went to the Provincial Building, and spoke with Mr. Wilkins and Mr. Bruce McDonald.

Mr. Remak. Be good enough to bring this home to Hertz.

Q. By Mr. Van Dyke. Have you at any time had any conversation with Hertz, before or after that?

A. No, sir.

Q. When you arrived in Halifax, state what you did?

A. I went to the Provincial Building and met Wilkins, the first secretary of Nova Scotia, and the same day afterwards I spoke with Sir Gaspard le Marchant, the governor of Nova Scotia. I sent some days before a letter in the French language to Sir Gaspard le Marchant, and told him what I came to Halifax for—that I was induced by his proclamation. I had sent a man before to No. 68, South Third street, Philadelphia, to see what the business was, because it was in the proclamation that physicians and surgeons would be engaged with good pay, and this man came back and told me that the whole business had been stopped by the United States attorney, and that he had spoken with one man on the subject, but he did not tell me his name, and he told him that the business was all right, to go to Halifax, and I would be engaged as physician for the regiment. I wrote the letter, but did not receive any answer, because the business was stopped. In Halifax, the governor told me that I could not be engaged unless I raised men. I refused that, because I told him I did not come for that business ; I came to be engaged as doctor, and not as recruiting officer. Mr. Wilkins called on me some time afterwards, and told me that if I raised men in the United States, I should be engaged, but not if I refused ; and then I was obliged to go, because the governor told me I could not be engaged without this ; then I was employed as officer of recruiting, and went with Captain Strobel to the States, and was sent by him to Detroit, in Michigan.

Q. Did you hear any conversation at any time between certain gentlemen when Mr. Crampton was present?

A. Yes, sir, in Halifax, on the 15th of May, we met Mr. Crampton.

Q. Who told you to meet him?

A. Strobel called on me on the 14th of May, and told me to come

to the Provincial Building, Halifax, and meet Mr. Crampton and Sir Gaspard le Marchant; and I went, and found there Lieutenant Preston and Strobel, and some other officers.

Q. What took place in that conversation?

A. That conversation was, that we should go to the United States and raise troops.

Q. Who told you to do that?

A. Mr. Crampton and Sir Gaspard le Marchant, with Mr. Strobel.

Q. They said that to Strobel?

A. Yes, sir, and that he would go to Canada and the States and arrange this, so that we could raise troops without danger.

Q. What plan did they give you to raise these troops without danger?

A. That is what they spoke to Captain Strobel. I did not hear every word, but heard them tell him that we should go to the States and arrange the business, so that we could not be caught by the United States officers.

Q. They told Captain Strobel that he should go to the States and arrange business so as not to be caught by the United States officers?

A. Yes, sir.

Q. Who told Strobel that?

A. Mr. Crampton; he made the arrangements with Strobel, and spoke that to Sir Gaspard le Marchant.

Q. What plan did Mr. Crampton say you were to adopt in the States to prevent being caught by the officers?

A. That we should do it very still; not to work too openly; and that we should engage runners and any other men who would bring men to the depots, and from these depots we were to send them to Canada West to the barracks.

Q. What kind of runners did he speak of your engaging?

A. Boarding-house runners, emigration runners, commission-house runners, and every kind of runners, I believe.

Q. Did he say anything in reference to what you were to say to these men?

A. That every man was to receive \$30, and \$5 was to be taken for payment of expenses; that is what I learned from Strobel afterwards—that is what was promised the men.

Q. Was anything said about that in conversation with Mr. Crampton?

A. No, sir, not to me—it was spoken to Mr. Strobel.

Q. He told Strobel they were to have \$30?

A. Yes, sir, and \$8 a month pay—cash. The bounty was given for enlisting. Each runner should receive \$5 a head for enlistments.

Q. That was the pay of the runner?

A. Yes, sir, if the man was capable of being enlisted—not if the man was refused.

Q. Were they to get any pay for men refused?

A. No, sir.

Q. Then it was only for the men who arrived at the barracks and got enlisted that they were paid \$4 a head?

A. Yes, sir.

Q. Did you receive any money at that time for this purpose?

A. On the 14th of May I received from Captain Strobel \$220.

Q. Where did he get it from?

A. Out of the Provincial Building. Mr. Bruce McDonald gave him the money in my presence. He is the clerk of Mr. Wilkins, or second secretary, I do not know which it is?

Q. What were you to do with that \$220?

A. To run to the United States for these men; that was the pay for half a month for myself and one sergeant.

Q. Did you see Mr. Crampton after that?

A. We left the next day, the 19th of May, and we came to Windsor, in Nova Scotia, and when we got there we took the steamer to St. John's.

Q. Where did you next meet Mr. Crampton?

A. I saw him in Windsor, and saw him on the ship to St. John's, and next day at Portland. At Windsor we took the Creole for St. John's, and I saw Mr. Crampton in the presence of Lieutenant Preston and another English officer—I do not know his name. He came on board to us there at St. John's. He talked very often to Captain Strobel, and I went in the same ship with him to Portland.

Q. Did you see him afterwards in Portland?

A. No, sir; I know he left the steamer at Portland.

Q. Where for?

A. To go to Montreal.

Q. Who went with him?

A. I believe Captain Strobel; I took the cars for Boston, and from Boston to Niagara Falls.

Q. For this purpose?

A. Yes, sir, at Niagara Falls I expected Strobel with orders how we should go on.

Q. You did not see Crampton afterwards?

A. No, sir.

Q. Did you see any written instructions at Halifax?

A. I saw the proclamation. Mr. Wilkins showed me the proclamation for enlisting.

Q. (Proclamation with British arms on it shown the witness, same as on page 114, *ante*.) Is that the one?

A. Yes, sir, I saw that; Mr. Wilkins gave me one of them; he gave it to me in the Provincial Building to read it; he was secretary of Nova Scotia.

Q. What did he say it was for?

A. It was for the foreign legion.

Q. Did he say that this was the placard under which they were acting?

A. He told me if I should be engaged I should go on to the States and raise troops, but that without this I could not be engaged—saying what Sir Gaspard said to me. I did not see Mr. Howe; he was not in Halifax at that time; I heard very often from him.

Q. Have you at any time seen Mr. Hertz?

A. Not in this business.

Q. Did he ever say anything to you about this business?

A. No, sir. When I came with Strobel, I heard from Halifax that we could not be engaged because we did not do anything in getting men.

Q. What do you mean by that?

A. That we did not raise plenty of men, and squandered all the money, as they said.

William Eckert, sworn.

This witness did not speak English, and was interpreted by Mr. Oehlschlager. Examined by Mr. Van Dyke.

Q. Can you write?

A. No, sir; I can read my name; I knew Mr. Hertz; I saw him at No. 68 South Third street.

Q. What did you go there for?

A. I went to enlist; I wanted to enlist in the British army.

Q. Did you enlist?

A. I did not enlist; I went down with a good friend of mine, whom I requested to bring me down; he did not go down with me, but suggested to me another who went down with me; my friend spoke for me, and said, "Here is a man who wishes to enter the British army."

Q. Who did he say that to?

A. Mr. Bosschart and Mr. Budd. One of the gentlemen answered, "We do not busy ourselves with it; we will merely send you to Halifax, and then if you wish to serve you can serve, and if you wish to work you can work;" that the men were enlisted in Halifax. My friend asked how much bounty money in hand was received, and Mr. Budd told him he would receive as bounty \$30, and \$8 a month. Well, then I asked whether there was nothing paid in advance or immediately, for the few days I would have to remain here. They said they gave nothing; then I went away. They asked me what my name was; I did not write it; Mr. Bosschart wrote it.

Q. Where did he write it?

A. On a sheet of paper.

Q. Did you agree to go?

A. Yes, sir.

Q. Did you get a ticket for your passage?

A. Yes, sir.

Q. Who gave it to you?

A. Mr. Hertz.

Q. When was it he gave it to you—the day you sailed, or before?

A. On Wednesday afternoon.

Q. Did you engage to go with the intention of enlisting when you got there?

Mr. Remak objected to the question as a leading one.

Judge Kane. The question is too directly indicative of its answer.

Mr. Van Dyke. What was it your intention to do when you got to Halifax?

A. I wanted to go to the Crimea.

Q. In the "foreign legion?"

Mr. Remak objected.

Question by Mr. Van Dyke. In what capacity did you want to go to the Crimea?

A. As a soldier.

Q. When Mr. Hertz gave you the ticket to go to New York, did he understand that it was your intention to enlist when you arrived at Halifax?

Mr. Remak objected.

Q. Did Mr. Hertz, at the time he gave you a ticket to go to New York, know that it was your intention to go to Halifax?

Mr. Remak objected. The objection was overruled.

A. Mr. Hertz was not there the first day.

Q. I refer to the time he gave you the ticket; at the time Mr. Hertz gave you the ticket to go to New York, did he know it was your intention to enlist when you arrived at Halifax?

A. Mr. Hertz was not there when my friend brought me to the office.

Q. You have said that Mr. Hertz gave you a ticket to go to New York?

A. Yes, sir.

Q. At the time Mr. Hertz gave you the ticket to go to New York, did he know it was your intention to enlist?

A. I do not know whether the other gentleman told me the reason why he wished me to go to New York.

Q. Had you told Mr. Budd your intention?

Mr. Remak objected. The objection was overruled.

A. He heard it.

Q. On Monday?

A. Yes, sir.

The counsel for the defence, (Mr. Remak,) in the course of the examination of this witness, frequently interrupted, and attempted to correct the interpreter in his interpretation of the language of the witness. On the conclusion of the examination, he called Mr. Oehlschlager to the stand, for the purpose of questioning him as to his interpretation of the witness, but on after consideration waived the examination.

Augustus Titus, sworn. Examined by Mr. Van Dyke.

Q. Do you know Mr. Hertz?

A. Yes, sir.

Q. Which is the person?

Witness (pointing to Hertz.) That is the gentleman sitting there.

Q. State what you know of this matter?

A. Well, I was here in this city without work, and I had no boarding house to go to, as my landlady had told me to leave; so I read of this place in the *Ledger*, and went down and saw Mr. Budd there, and a couple of other gentlemen; I went in and asked them if this was the place where they enlisted them, and I was told—

Q. Who did you ask that?

A. The gentleman is not here—he was a stranger to me. Mr. Hertz was not there the first time.

Q. How long was this before you sailed?

A. It was about 3 o'clock in the afternoon of day before. Then I

was told that I could not see the agent now, that he was out, and to come in two hours after that time. I came in, and I saw Mr. Budd, and he asked me my name; and I told him my name, and he wrote it down on a sheet of paper.

Judge Kane. How came he to ask your name?

A. Well, I don't know, without he wanted to put it down.

Q. Did you tell him what you wanted?

A. I asked him if this was the place where they enlisted, and he said no, it was not the place where they enlisted, but the place where they got men to take them to Halifax.

Q. For what purpose?

A. For enlisting. I gave them my name. My intention was only to go to New York. I was going to New York, and there I was going to leave them.

Q. Did you tell them that was your intention?

A. No, sir, I did not; I kept that to myself.

Q. You were going to out-wit them, then, I suppose?

A. Well, I was going to try to; I did not know whether I would succeed.

Q. What did you tell them you intended to do?

A. I told them I intended to go out to Halifax for the purpose of enlisting.

Q. When did you see Hertz?

A. On the morning we sailed I saw him; I went up to the office and asked him what boat I was to go on, and he said that he would be down and make arrangements. There were Mr. Hertz, Mr. Budd, Mr. Bosschart, and another gentleman standing talking together, and I went down to the boat and waited until Mr. Hertz came down. I cannot say whether he came with Budd or not. I stopped down at the boat, and before we started Mr. Budd went around the wharf to see whether any one else was off the boat, and when he found there was none there, he came on board, and just before we commenced to start he called us all up. He did not form us into a rank. Sometimes he came to us one by one, and sometimes two or three were collected together, and he would ask our names. We told him our names, and he marked a cross I think. I won't say it was a cross; it was a mark of his own on the paper. At that time we went down to the navy yard, when Marshal Wyncoop caught us. [Laughter.]

Q. Did you get a ticket?

A. Yes, sir, I got a ticket of Mr. Budd, at 68 South Third street. Mr. Hertz was not there at the time. I can read.

Q. (Ticket shown.) Is that the ticket?

A. That is the color of the card (green) I got. On the back was "Pine St. Wharf," and those are the letters ("N. S. R. C.") I have had them in my head from that day to this, and will ever remember them.

Judge Kane. Perhaps you can tell us what those letters mean?

A. No, sir, I cannot. They stand for something I am not able to tell.

Q. You say you can read. (Paper shown.) Is that the paper he marked your name on?

A. Well, I cannot say whether it was a whole sheet or half sheet. He had it lying on a table.

Q. Well, your name is on that sheet?

A. Yes, sir, my name is on there, No. 9.

Mr. Van Dyke. Is there any cross-examination?

Mr. Cuyler. There is a frankness about this witness that quite disarms cross-examination.

Charles Weaver, sworn. Examined by Mr. Van Dyke.

Q. Do you know Mr. Hertz?

A. Yes, sir.

Q. Can you point him out here?

A. (Pointing to Hertz.) That is the gentleman.

Q. Did you see him in March, 1855?

A. Yes, sir, down in Third street.

Q. What did you go there for?

A. I went down because I heard from some of my friends that they were enlisting soldiers for the British army there. I went down—it was an hour before they started—and I asked him whether he enlisted men to go into the British army. He said no, I do not enlist, but if you want to be enlisted I will give you a ticket to New York, and from there the officer would give me a ticket to Halifax.

Q. Did you tell him you would enlist in Halifax?

A. No, sir, I did not tell him that; I told him I wanted to enlist, and he gave me a ticket; he did not give me any money; he took my name.

Q. Was it written in a book or on paper?

A. I suppose it was written on a sheet of paper; Mr. Hertz took my name—he wrote it.

Q. Did you go on board the boat?

A. Yes, sir.

Q. (Ticket shown.) Was it one of these tickets that you had?

A. Yes, sir, I had one of that kind; I went down to Pine street wharf; Mr. Hertz was there the day the boat sailed; I went down with a friend of mine to the boat; I saw this man, Mr. Bossechart, there, and he said this is the boat that goes to New York; Mr. Budd was on the boat—he was in command; he took my name on board the boat, and called us together the same as an officer; there were twelve or thirteen men together, and he had command of them; that is what I saw; he took the names on the list, and as he took them he called us together, and told us to go on that side or this; he mustered us into rank.

Mr. Cuyler. What do you understand by mustering into rank?

A. Well, we stood in a line, and he said fall in.

Q. Who told you that?

A. This young gentleman, (pointing to Budd.)

Q. That is not Mr. Hertz?

A. No, sir.

Q. Who is it?

A. Mr. Budd; that is the gentleman.

Patrick Conroy, sworn. Examined by Mr. Van Dyke.

Q. You have been examined before in this case.

A. Yes, sir, before the commissioner.

Q. State to the court and jury what you know in this matter, and what you have heard from either of these defendants, Hertz or Perkins?

A. I never saw Hertz but at the United States commissioner's office; I had the conversation about this matter with Mr. Perkins.

Q. State when you had that conversation, and what it was?

A. Well, I was introduced to Mr. Perkins at the *Pennsylvanian* office. Is it necessary for me to state all of this matter?

Mr. Van Dyke. If it relates to the issue now on trial, state all.

Witness. I was introduced to Mr. Perkins at the *Pennsylvanian* office some time last December, I suppose in that neighborhood; and a few days afterwards I had a conversation with him at Mr. McGeoy's hotel, in Walnut street, in which he said there were things he might wish to talk to me about. I did not understand it at the time, and not knowing what he meant, I did not say anything. The next time I met him was at the *Pennsylvanian* office again; he was about leaving it in the evening, and was cursing and ready to kill all about the office, damning everybody in the office; I asked him what was the matter, and he took me by the arm, and we walked down a little; he said that he had just been writing a letter to one of the lords in England, who had charge of the government there; that he had everything right with the *Pennsylvanian* newspaper here, so far as siding with the government against Russia was concerned; and the first thing he saw that morning was an article directly against what he had written to England, and that the *Pennsylvanian* had deceived him. I passed it off carelessly, as I did not care what was going on between him and the *Pennsylvanian* or the British government. I met him again some time afterward in the Exchange Hotel, and he called me to one side, and told me that it was necessary to raise a certain amount of men in this country for the purpose of raising a legion to go to the Crimea. I asked him how it was, and he said that such was the case. I asked him if there was any danger in enlisting men in this country for that purpose, for I had heard that there was, and he said no; that he had been down to Washington and fixed all that. He said that Mr. Crampton sent for him, and when he went to Crampton he sent him to Marcy; and when Marcy asked him all about it, he said he humbugged him about it, and told him that he was only going to send the men to Halifax to dig a canal; that Mr. Marcy, in reply, remarked that he was a pretty cunning fellow, and then it all passed over; it was all fixed, and there was no more danger at all about it; he then said to me that if I would choose to take a part in the matter, he could guaranty me a commission in the legion for a certain number of men, and for a less number he could guaranty a non-commission; that if I would take an interest in the matter he would fix things for me, but that it would take two or three months to do so; that I knew there were a great many men over the country who were suffering from bad times, and who could be enlisted, and that he would make it to my interest to do so. I told him I would

think about it. The next time I saw him he was going directly from his office in Third street; from the steps of his office he went down to Campbell's cellar in Third street. He was there a minute or more, and then he came up and came over to me opposite the Exchange Hotel; he took me by the arm and pulled me to one side and asked me if I had done anything in that matter yet; I said no, I did not intend to do anything in the matter myself, but there were friends that might; he then said to me that he could not guaranty a commission in the regular army, but he could in the foreign legion, and if I had friends who would take such positions he would guaranty them the same; and if I saw any who wanted to enlist, to send them over to the office, 68 South Third street; I said I would do so, and he then remarked, I am now in a hurry; I am going down to the British consul's; I have news from Washington, and I will see you when I come back. I had no more conversation with him on the subject, except that he told me he was an agent of the British government, and had three or four hundred men to look after in this country, and pay them. He told me that, on the occasion when he had to see me in a hurry; he repeatedly told me that he was an agent of the British government, and solicited my assistance in all these ways for the purpose of raising men for the foreign legion.

Q. Did he tell you where the enlisting was done?

A. He did; he pointed over to the office, No. 68 South Third street.

Q. Where was he at the time?

A. Standing on the steps of Durar's Exchange Hotel.

Q. How long before the arrest of Hertz?

A. Some two or three weeks.

Q. Are you in the volunteer corps?

A. Yes, sir; I hold the commission of colonel.

Q. Did he ask you anything about the commission you had?

A. Yes, sir; he asked me what commission I held, and I told him colonel of the second regiment of Pennsylvania volunteers; and he said he could guaranty me a captaincy if I would go; and he knew from my position here that I could be of use to them, and he would make it of use to me. I have now stated pretty near the whole substance of the conversations. We had a great many other conversations, but there was nothing stronger in them.

Q. Did he tell you at any time, or do you know, that he actually engaged any person to go to Halifax for the purpose of enlisting; and, if so, what person?

A. I do not, sir; I know he tried to engage me.

Q. Did he not engage you?

A. No, sir; I refused him, and he tried to get me to solicit others to do so.

Question by Mr. Gillou. He said that you could be useful to him in that line of business?

A. Yes, sir.

Q. You are in business in this city?

A. Yes, sir.

Edward W. Power sworn. Examined by Mr. Van Dyke.

Q. Are you a military man?

A. I belong to a military company, and hold a commission.

Q. Do you know anything about Hertz?

A. I do; I was at his office in South Third street about the 20th or 21st of March, or thereabouts; I went to 68 South Third street, and went up stairs into a back room, and there I found some five or six men sitting around the table; I spoke first to this gentleman here, I think, Mr. Leob; I asked him whether that was the place in which they enlist men for the Crimea; he said that this gentleman (pointing to Mr. Hertz) was the person. I then turned to him and asked him what were the inducements offered to those men who had served in Mexico during the war. He said that any man who could come with a company, and be capable of commanding them, would be entitled to a commission in the English army; that this legion was for the purpose of going to the Crimea. He asked me if I was connected with anything here. I told him that I was; that I then held a commission; and he asked me then what number of men there were. Well, I said, we numbered from 60 to 64, but there were not more than 30 equipped. He then seemed anxious that I should call again. I left him with the promise that I would call again; I did so, in company with Peter Somers, who was formerly first lieutenant of the Continental Guards; I went there and introduced Mr. Somers under a fictitious name; I did that for the purpose of ascertaining how they sent the men away, so as to have him ascertain that fact. We had a conversation, for the second time, with Mr. Hertz, and Somers laughed, and I thought the joke was being carried too far, and I kind of smiled, and then I saw the whole thing was settled, and we retired. On the 27th, the night before the arrest, a man by the name of Renners, I think, came to the armory while I was drilling the company.

Q. Was Mr. Hertz there?

A. No, sir.

Q. Do you know whether Perkins had anything to do with that office?

A. Yes, sir; the second time that I went there; that was on the Saturday Mr. Perkins was sitting in the front room.

Q. When you land at the top of the staircase going up, you go into the back room of that office first, do you not?

A. Yes, sir, and that makes the front room the back room; there were two folding-doors between the two rooms, and they were partly open; the room fronting on Third street was used as the back or private office, and the back room as the front office. There was a tall man there, from whose appearance and manner I supposed was an English officer, or one engaged in the English service. Perkins was sitting on a chair leaning back, and as he saw me he drew his head back.

Q. Do you know from any conversation you had with Perkins, or are you aware that Perkins has ever engaged any individual to go to Halifax to enlist?

A. Well, I would not, may it please the court, like to answer that question, because it would, to certain extent, criminate me, so far as the law of the State is concerned.

Mr. Van Dyke. I did not ask you anything regarding yourself with Perkins.

Q. Do you know whether he has engaged, hired, or retained, or made a bargain with any other individual?

A. I know that he left me one evening to go to New York for the purpose of attending to some business for Mr. Crampton.

Q. You do not exactly comprehend my question. Do you know whether he ever said to any individual, "I want you to go," or did he engage any individual to go to Halifax?

A. No, sir.

Q. Do you know what he was doing in the front office when you saw him there?

A. No, sir.

Q. What was your conversation at that time?

A. Mr. Hertz and I were speaking together about this company.

Q. Was that the only time you saw him there?

A. I saw him afterwards come out. I went there with a number of persons, who waited on the outside to hear what was to be said, as they were determined that the thing should be broken up; and as we stood on the other side, Mr. Perkins came out and went down into Campbell's cellar, and then he came out and over to the other side, and spoke to Conroy and some others with him. My introduction to Perkins was that he came with a note to me as the second of a gentleman who had challenged a friend of mine to fight a duel.

Q. He told you he was going to New York to see Crampton?

A. Yes, sir, he said he had business with him; he told me that in Brown's drug store.

Q. Did he tell you what business?

A. No, sir; he told me that he had a great deal of business to do now; that he was connected with the railroad, and had to see his friend Mr. Crampton in New York.

Hugh Casey, sworn. Examined by Mr. Van Dyke.

Q. Do you know Mr. Hertz.

A. Yes, sir.

Q. (Pointing to Hertz.) Is that the gentleman?

A. That is the gentleman.

Q. Do you know Mr. Budd?

A. Yes, sir, (pointing to Budd,) that's him.

Q. Did you go to the office, No. 68 South Third street?

A. Yes, sir, I went there, and Mr. Hertz and I had a conversation. I saw in the *Ledger* that they were enlisting for the foreign legion there, and I went down and saw Mr. Hertz, and he told me to come back and he would give me a ticket; I went there on Friday, and he gave me a ticket to sail on board the boat with, and twelve-and-a-half cents, and told me that the boat would sail on Sunday, the 25th; I went back on Saturday with three other men who enlisted with me, and he gave me a quarter of a dollar. On Saturday afternoon, I went back again, and he gave me nine cents; and on Sunday I went down to the boat, and she had sailed. I went to the office on Monday, and Mr. Hertz was not there, but Mr. Budd was there, and he

told me to come back on Wednesday, and he would give me a ticket. On Wednesday I went down.

Q. What did you do with the ticket you got on the first occasion?

A. I gave that ticket up. I guess you have it now. On Wednesday I went down there, and met Budd at the steamboat with Hertz. Mr. Hertz saw me and told me to go on board. I went on board the steamboat, and there I saw the rest of the men had tickets in their hands, and I had none; and then I went up to the office, thinking that Hertz was there, to get a ticket, and when I came back the boat had sailed.

Q. Did Hertz give you the first ticket?

A. No, sir, Mr. Budd gave me the ticket himself for Sunday; I do not recollect getting it on Saturday; the 31st of March I saw Mr. Hertz.

Q. When you got back from the office you say the boat had sailed?

A. Yes, sir; I went up to the office in Third street, and when I came back the boat had sailed; it was the "Menemon Sanford;" I then came back, and I saw Mr. Hertz on Saturday in Mr. Heazlitt's (I think that is his name) office; he was looking for bail, and I went over to him, and Hertz said to me: "Who is going your bail?" and I said, "I do not want any bail, because I came out of the boat to get a passenger ticket, and did not go;" and he then said: "Do you want a little money?" and told me to stop around by-and-bye, and he would give me some money; I went around at 4 o'clock. Mr. Remak and he went up to Seventh and Chestnut streets, and I waited in the room until he came back, when he gave me twenty-five cents, and said to me: "You will go and swear against me, and be damned to you."

Q. Did you tell him what you wanted to go to Halifax for?

A. I said times were very hard, and I would like to go to Halifax for the purpose of enlisting in the foreign legion for the Crimea; and then he said that he would give me tickets to go there, and that I would get \$30 bounty, and \$8 a month, but that he could give me no money until I went on to Halifax.

Cross-examined by Mr. Remak: Did you not tell some people that you were going to see Mr. Van Dyke, and get him to send you to prison for the purpose of your support?

A. I did not, sir, use that expression; I told a person that I met on the street that I was fooled by the party, and that Mr. Hertz insulted me, and I would go as state's evidence against him.

Philip Label sworn. As this witness could not speak the English language, Mr. Davis was, at the request of Mr. Remak, affirmed as his interpreter.

Examined by Mr. Van Dyke.

Q. Do you know Mr. Hertz?

A. Yes, sir, (pointing to Hertz,) that is the gentleman sitting there.

Q. State all you know about the enlisting?

A. I read in the Democrat that some persons were required to go to Halifax; and I went to the office, No. 68 South Third street, and

made some inquiries there if that was the place for enlisting; I made the inquiries of Mr. Bosschart; I then inquired if they engaged some people there; they told me that they desired to engage some persons to go to Halifax, in order to work there; I then asked him if I could become a soldier if I went there; he made the reply that it was left optional to me to do so or not; that those who are willing to become soldiers may do so, and those who wish to work may do so too.

Q. Did you say whether you were willing to become a soldier, and that you wanted to become such?

A. No, sir, I did not intend to go there as a soldier; I made the inquiry, if after a person got there he enlisted, what he received; I was then told there was \$30 bounty and \$8 a month.

Q. Who told you that?

A. The same man, Mr. Bosschart.

Q. What conversation, if any, took place between you and Hertz?

A. The first day that I came there I saw this gentleman there; I then inquired what time the vessel would go; he told me that he did not know—that Mr. Hertz was not in, and he could not tell me; I went there again on the following day and saw Mr. Hertz, and he handed me a card.

Q. (Ticket shown, same as on page 114, ante.) Was it a card like that?

A. Yes, sir.

Q. Did you sign any paper?

A. No, sir, I did not; that gentleman put my name down on some paper; Mr. Bosschart did so.

Q. Did you go to the vessel?

A. Yes, sir. Mr. Hertz told me where the vessel was, and I went towards it, that is all; I went on board, and that is all.

Q. Did you go to Halifax?

A. No, sir.

Q. Why not?

A. Because we were arrested before then.

Q. Who had command of you on the boat?

A. Mr. Budd.

James Johnson, sworn. Examined by Mr. Van Dyke.

Witness. Matthew Burk is my proper name; you will see it so on Mr. Hertz's list.

Q. How came you to get the name of James Johnson?

A. I did not wish my name to be published in the papers, so that my friends would know it; I gave my proper name to the court at the time.

Q. Why did you not want your real name known?

A. I did not want my friends to know that I was made a prisoner.

Q. Did you not give that name under oath?

A. No, sir, I did not; I told the commissioner and the grand jury, and you, my proper name, and the circumstances of it.

Q. Do you know Mr. Hertz?

A. Yes, sir.

Q. When did you see him?

A. I saw him on the 27th of March.

Q. Did you see him before that?

A. No, sir.

Q. Were you on the boat?

A. Yes, sir—in the steamer Menemon Sanford, on the river Delaware.

Q. Had you seen Mr. Hertz before that?

A. I saw him the day before, at 68 South Third street. We were taken on a Wednesday.

Q. How came you to go to his office?

A. I called first on Monday. I saw the advertisement in the *Ledger* of men wanting. I did not read it myself, but another man read it for me, and I went to see. Mr. Budd was there. I told him I had called from seeing the advertisement of soldiers wanted, and I said that I wanted to enlist. Mr. Budd told me that I could not be enlisted there, but that he could tell me how I could get to Halifax, and said that I supposed that would do to get to Halifax. He then told me I must come once again. I called again that afternoon, which was Monday afternoon, and he told me that a boat had gone before, and it was a pity I had not been sooner. I called again on Tuesday, and Mr. Hertz was there. I told Hertz my business, that I had come to enlist, and the reply he made I cannot tell now, but it was "very well," or something to that effect. He told me to stay a while, and I staid a while, and some more men came. I told him my name, and he wrote it down on a sheet of paper. He also wrote some others. I told him, when he was going to write it, that another man had written it the day before, and he said, "Very well, I will take it again."

Q. (Paper shown.) Is that the paper on which your name was written?

A. That is my name on it, though I cannot say whether it is the paper on which Mr. Budd wrote my name the first day. I called on Hertz the day after. He did not tell me what bounty I would receive; I did not inquire. He gave a ticket, and I was to go down to the boat.

Q. (The "N. S. R. C." ticket shown.) Was it a ticket like that?

A. I actually believe it was one of those green tickets. I think so, but would not swear positively that it was a green ticket, though I actually do believe it was one. I recollect its having those letters ("N. S. R. C.") on it.

Q. What did he tell you to do with the ticket?

A. He told me I was to go down and go on board at Pine street wharf. I then went away, and called back again to the office, and I asked him "was I to go on board and say nothing to no one, or was there to be anybody there to receive me?" He told me to go down between nine and ten, and go straight on board, and to tell the rest, if I saw them, to go on at the same time. I went next morning and did so, and went on board the boat, and was taken about to the navy yard, when they brought us back again.

Q. What took place when you got on board the boat?

A. I saw Mr. Budd on board the boat, and we were called together,

and an exchange of tickets took place. We were going on, and, I thought, in a fair way for Canada;—and the next news that I heard was that we were all made prisoners.

Q. Did Mr. Budd call you together?

A. Yes, sir; he was there, acting as a kind of officer, or man in authority. He did not put us in military form, but called us together.

Cross-examination by Mr. Remak:

Q. How much money have you received from the United States as witness' fees?

Mr. Van Dyke objected. You need not answer that question.

Mr. Remak. I only wanted the jury to know. You need not mind.

Peter Muhn sworn. Examined by Mr. Van Dyke.

Q. Do you know Mr. Hertz?

A. Yes, sir, I have known him since the 26th of March. I first saw him in the office, No. 68 South Third street.

Q. How came you to go there?

A. There was a man told me that there was an office to send men to Halifax to work. I was out of work and went there. That was on Monday afternoon, and I found nobody there but Mr. Budd and that young man there, Mr. Bosschart. He told me to come next day, when Mr. Hertz would be home, and then I could know all about it. I went there next day, and he said yes, he sent men to Halifax, to work.

Q. What kind of work?

A. Any work that you pleased; and if I did not like it there, I could get a free ticket back here again; and that if I wanted to go in the army, I would get \$30 bounty and \$8 a month. He told me to come in again about 2 o'clock, and he would tell me all about it. I went in about 2 o'clock, and he said that Budd was going off next day at 10 o'clock, and he gave me a ticket.

Q. What colored ticket was it—red, yellow, blue, or green?

A. I do not recollect; one of the green, I guess. (Ticket shown.) That is like it; Pine street wharf was on the back of it.

Q. You went to Pine street wharf?

A. Yes, sir, and I went on the boat.

Q. Whom did you meet there?

A. I met Mr. Budd; he was there, and he took command of us.

Q. Did you ever see Hertz down there?

A. No, sir.

Q. You were arrested that day, were you not?

A. Yes, sir.

John Jenkins sworn. Examined by Mr. Van Dyke.

Q. You are deputy marshal?

A. Yes, sir.

Q. Will you state whether you had a warrant, in the latter end of March, for the arrest of certain parties, and whom?

A. The marshal had a warrant for the arrest of Hertz and others, and I accompanied him.

Q. State what you did then?

A. The marshal directed me to go on board the steamer Sanford, and arrest the party that were there. I arrested Mr. Budd, together with some twelve or fifteen men, whose names I do not remember. The marshal himself afterwards went to the office of Mr. Hertz, and there arrested Mr. Hertz, Mr. Bosschart, and two others—four in all, I think.

Q. Mr. Hertz was among them?

A. Yes, sir.

Q. You arrested these men?

A. Yes, sir.

Q. ("N. S. R. C." tickets shown.) Do you know these tickets?

A. Each of the men had tickets similar to those upon their person. I took them from them.

Q. (N. Y. steamer ticket shown.) Do you recollect that?

A. I do not recollect that.

Q. (Book of Dr., containing cash account, shown.) Do you remember that book?

A. No, sir, I do not.

Q. (Book containing list of names shown.) Do you remember that book?

A. Yes, sir, I remember that book. I found it in the secretary, which Mr. Hertz called his private secretary, in the enlisting office. He gave me the key, and I opened it.

Q. (Receipt shown.) Did you find that there?

A. Yes, sir.

The receipt was read in evidence, as follows:

"PHILADELPHIA, March 25, 1855.

"Received of Mr. Hertz \$84 for passengers to Halifax.

A. WINSOR."

Q. Did you find this receipt of the *Ledger* for advertising one and two-thirds squares half a month, \$9 50, dated March 16, 1855, at the office, No. 63 South Third street?

A. Yes, sir, it was in the secretary; I recollect it.

Q. Did you find the receipt of the *Pennsylvanian* there?

A. Yes, sir; (this receipt will be found on page 144 ante.)

Question by Mr. Remak. Is Mr. Hertz's name in that receipt?

Mr. Van Dyke. No, sir, it is not.

Q. ("N. S. R. C." ticket shown.) Did you find any number of these tickets there?

A. Yes, sir, they were similar to these.

Q. What did you do with them?

A. I gave them to you.

Q. Do you recollect whether you arrested Michael Gilroy, as part of that company?

A. Yes, sir.

Q. On the boat?

A. Yes, sir.

Q. Hugh Casey?

A. Yes, sir.

Q. James Johnson?

A. I do not remember the name.

Q. Charles Weaver?

A. I do not remember the name.

Q. Peter Muhn?

A. I do not remember that.

Q. Philip Label?

A. No, sir.

Q. Augustus Titus?

A. I remember that.

Q. Bremen Kernsten?

A. I do not remember that.

Q. William Finley?

A. No, sir.

Q. You remember Titus, you say?

A. Yes, sir, I believe they all were the parties on the boat, but I do not remember the names at this time, nor did I hear the names at that time; I remember Gilroy, Titus, and Casey.

Q. (Paper shown.) Do you remember that paper?

A. Yes, sir, I got that in his office; it was on the file?

The paper was read in evidence, as follows:

“PHILADELPHIA, 26th of 3d month, 1856.

“This is to certify, that Mr. Julinas Lyncks is in sound health and fit for any service.

“BEIL, *Doctor.*”

Q. (Papers shown witness.) Do you remember those?

A. Yes, sir, these were in the secretary.

Mr. Van Dyke. The one is the paper which Mr. Budd stated contained the names of the persons he took, and the other appears to be a copy of the recruiting book.

Examined by Mr. Remak. Did Mr. Hertz, on the day of his arrest, give you the key of his office and the key of his desk of his own accord, freely?

A. I demanded them.

Q. Did he give them without any hesitation?

A. I demanded them through you, and after consultation with him you directed Hertz to give them to me.

Q. Did he give them of his own accord, or did I ask him?

A. I think that it was after you directed him to do it. I do not think I had any conversation with Mr. Hertz about the keys—it was with you.

Q. I think, in your examination before the commissioner, you said that at the time Hertz gave you the keys, and I had no objections.

Q. By Mr. Guillou. You mentioned that you arrested a number of persons on the boat, and you also said that you arrested at the office Hertz, and some others whom you did not mention. You did not arrest Mr. Perkins there?

A. No, sir, the marshal arrested Perkins. He was not at Mr. Hertz's office, or upon the boat. I do not know where he was when he was arrested.

Edward G. Webb affirmed. Examined by Mr. Van Dyke.

Q. Are you acquainted with Mr. Perkins?

A. I am.

Q. Have you ever had any conversation with him, previous to the 28th of March, in relation to recruiting for the British service?

Q. Yes, sir; I cannot speak as to the date, but during the time the enlistment was going on in Third street, opposite Dock, I met Mr. Perkins in Dock street, I think at the corner of Third and Dock, and we walked down as far as Walnut and Dock streets, and there stopped; a conversation arose between us as to the enlistment going on, or said to be going on, in one of those buildings on Third street; he stated he was hiring men at \$1 25 a day, and sending them to Canada or Nova Scotia, or some other place in the British provinces; I asked him for what purpose—whether they were to go in the foreign legion to serve in the Crimea; he said he employed them nominally for the purpose—I do not know whether I use his language, but I give the idea—of working upon a railroad; I remarked to him that I thought they would find their way into the barracks, and he said he had no doubt of that, or he supposed so, or something of that sort.

Q. Did he state to you at any time whether he was doing this at the suggestion or by the advice of any higher authorities than himself?

A. He did; he told me he had not been long from Washington, and that he had had an interview with Crampton, the British minister, while there, in relation to this subject, and that he had been called to Washington in consequence of some disclosures made in Philadelphia, or other places, about the matter; I understood him to say that he or Crampton waited upon Mr. Marcy, or that Crampton told him that he had seen Mr. Marcy and had entered into an explanation about the course they had pursued in Philadelphia; and that after he had explained, Mr. Marcy either clapped him upon the shoulder—Perkins or Crampton, I do not now distinctly recollect which—and said, “You are a *cunning dog*, you have not violated any law of this country.”

Q. Did he tell you what he was doing?

A. He said he had employed a large number of men; he mentioned the number, but it has escaped my memory; that he employed them at \$1 25 a day to go into the British provinces, nominally to work upon the railroad, but really to go into the army.

Mr. Guillou. Did he say that?

A. That is not his precise language, but that is the idea; it is impossible for me to recollect his language.

Q. Give the substance of it?

A. As near as I recollect, he said he had employed a large number of men, and had dispatched, I think he said, 500 already, nominally to work upon the railroad in one of the provinces, but he expected that they would find their way to the barracks. I asked him whether he did not employ them for that purpose. Well, (he said,) he did not care a damn where they went after they got there; that his purpose was to get them there, and then they might take care of themselves.

Q. Did he say that the British authorities would take care of them after they got there?

A. I cannot say, with accuracy, whether he did or not. He talked very fast; he was in a talking mood, and said a good deal; I saw from his flushed face that he was in a talkative way.

Q. Did he at any time try to get you to write editorials in your paper on this British question?

A. He did. He was in the habit of coming into the Pennsylvanian office nightly and daily, long before I knew who he was. After he had been coming there several weeks, he ventured into the editorial department, and conversed with the telegraphic reporter, Mr. Johnson; he entered into conversation nightly with me upon the subject of the war in the Crimea, and contended that the democratic party ought to take ground in favor of the allies; that, in fact, the United States, as a general thing, should do so, because she was the daughter of Great Britain; our people spoke the same language, and were educated in the same literature, and so on; he frequently grew warm upon the subject, and I listened to him; and repeatedly while he was talking upon that subject, I was writing an article against the allies, and combatting his argument as he was progressing.

Q. Which is Mr. Perkins?

A. I know him very well—I have seen him almost every day; but I do not see him now in the room.

Mr. Guillou. There is no difficulty about that.

Witness. He always said that he was an agent of the British government, and that he was in correspondence with Lord Palmerston, and I think Lord Clarendon. He gave me to understand that he was a tory, and that the tory party in England was the only party that knew anything, [laughter;] that they were always able to carry on the government properly; and that the whig party was composed of dunces, [laughter;] who always got into difficulties, and were the bitter enemies of this country. He said that he was a correspondent to several newspapers, and mentioned particularly the Times; and stated that he had, with every mail, sent a file of the Pennsylvanian to Europe, to the Times. He also spoke of Lord Brougham, and said that he was in correspondence with him.

Q. Did he say the correspondence was on this subject?

A. No, sir, I do not think he did.

Q. Did he mention the subject?

A. He was talking about this subject at the time he said this. He complained about the tone of the articles in the Pennsylvanian, and showed a good deal of feeling. He said that he had written to his employers in Europe, and had assured them that the democratic press in this country was all right, which I believe did not happen to be the case, [laughter;] and that they would think it very strange that he should give them such information when they found the tenor of the articles against the allies so ultra, and so strongly in favor of Russia.

Judge Kane. Did he classify Brougham among the whigs or the tories?

Witness. I do not remember whether he classified him or not; he said he corresponded with him.

Mr. Guillou. May it please your honor, he was like the man in the play; "he received letters from Constantinople." [Laughter.]

Q. Did he speak of this as confidential?

Witness. Yes, sir, he did, and remarked on several occasions that what he told me was contained in some letters which he had just received, but could not show the letters to me. [Laughter.]

Judge Kane. Was there any relation between you and him which would have suggested the propriety of his telling you this?

A. No, sir; he is excessively talkative, but is a man of large information, obtained by travel, and is a man of education. He spoke of his being lieutenant in the British army in India, and was promoted to a captaincy by the brevet; that he had been theré, and was in Hindoostan and in that terrible fight in the mountains of Afghanistan where the British army was literally destroyed. He also spoke of his wounds, but never showed them. [Laughter.] He also spoke of his having been directed to superintend the embarkation of troops to some part of Africa or Hindoostan.

Question by Mr. Van Dyke. You are the editor of the Pennsylvanian?

A. I am.

Q. And that is what induced this conversation with you?

A. Yes, sir.

Q. You were at the time editor?

A. Yes, sir.

Judge Kane. And your press was at the time unfriendly to his projects?

A. It has been during the year and a half that I have been editor, and was so, I think, before. I did not like the threatening remarks towards the United States of some of the gentlemen high in power in England and France, and I thought we had better take care of ourselves, and put our house in order; and, therefore, I wanted the allies soundly drubbed.

Question by Mr. Van Dyke. I believe you have stated, in substance, everything?

A. As far as I recollect.

Q. Did he at any time say he engaged or retained any person to go to Halifax with the intention of being enlisted after he got there?

A. Well, he spoke in general terms, and left the impression upon my mind that he had employed those men for that purpose, and had some understanding with them that, after they got there, they were to go into the barracks. He may have mentioned them by name, but I have no recollection of it; he left the impression upon my mind that they were employed for that purpose.

Q. Have you stated fully the conversation which he repeated to you as having had with Crampton upon that subject?

A. I cannot recollect it; he talked a good deal upon that subject, and endeavored to impress me with the idea that he was a very great man, and knew the secrets of the British cabinet.

Q. You were never at this recruiting office, No. 68 S. Third street?

A. I passed by it daily, and saw something was going on; but did not know what. I saw several persons going in and out, and saw him repeatedly come out, which led me to suspect that he was a party in the matter.

Cross-examined by Mr. Gillou :

Q. I do not think you understand a question of the judge. He asked you whether the opinion expressed in the Pennsylvanian was adverse to the project of the defendant, and, as I understand you, you answered that it was adverse to the war in Europe?

A. It has been against this project of enlisting, and it has been very severe. It was the first that denounced it and exposed it.

Q. State whether Perkins is not a man who talks a great deal?

A. Yes, sir, he talks incessantly. He is a man of large information, obtained by travel, and is a man of education, but not much judgment.

Q. His temper rises pretty high sometimes?

A. Very.

Q. Mr. Conroy mentions an instance when he left your office—cursing all in the office?

A. He was frequently excited about the subject, and I would then draw him out to the length of his tether.

Q. And you were writing articles, firing away at the allies, and loading your guns with the ammunition he furnished you?

Mr. Van Dyke. May it please the court—having, as I think, proved a clear *prima facie* case against one of the defendants, (Hertz,) and submitted all the testimony I have to offer against the other, (Perkins)—I deem it unnecessary to extend the examination of the witnesses relative to Mr. Hertz; I therefore close for the present the case of the government.

[The court then took a recess for half an hour.]

The district attorney having closed his case, the counsel for the defence said they had no testimony to offer.

Mr. Guillou, for Mr. Perkins, asked the court to instruct the jury to return a verdict of not guilty as to Emanuel C. Perkins, there being no evidence to hold him.

Mr. Van Dyke. Is it the intention to make a witness of the defendant?

Mr. Guillou. No.

Mr. Van Dyke. This application is entirely within the discretion of the court, and I presume might be granted, if the ends of substantial justice were to be served by so doing; but, as Mr. Perkins is not to be put upon the stand, nothing is gained to either of the defendants by separate verdicts. I am free to admit that, under the former ruling of the court, I have not made out such a clear case against the defendant Perkins as I should have liked, but I prefer the going jointly to the jury as they now stand. The result, no doubt, will be the same to Mr. Guillou's client.

Mr. Guillou. Under the remarks of the district attorney, I withdraw my application.

Mr. Van Dyke, in summing up for the United States, said: He did not deem it necessary further to examine the witnesses who could be produced; that he was satisfied the testimony which had already been submitted was conclusive in favor of the government on all the questions which had been submitted to the jury. He had but very few suggestions to make at the present time, and such he should address

to the jury more through the medium of the court than directly to themselves, because it was his belief that under the charge which the court would give of the law bearing upon the case the jury would have no difficulty in finding the defendant Hertz guilty, in the manner and form as charged in each and every of the bills of indictment laid before them.

The act of Congress, may it please the court, provides, (I recite it from memory, and the court will correct me if I am wrong :) First. That if any person shall, within the territory or jurisdiction of the United States, enter himself in the service of any foreign prince, &c. This is one distinct and separate misdemeanor created by the act.

Second. If any person shall hire or retain any other person to enlist or enter himself in the service of any foreign prince, &c. This is another, and the second distinct misdemeanor created by this act.

Third. If any person shall hire or retain any other person to go beyond the limits or jurisdiction of the United States with the intent to enlist or enter himself in the service of any foreign prince, state, colony, district, or people, as a soldier—not as a soldier on board any vessel or letter of marque, as has been contended, but as a soldier according to the general common acceptance of the term—or as a mariner on board any vessel or letter of marque, &c.

Now, these three are distinct and separate offences. The first is that of a person enlisting or entering into the service of any foreign prince, state, colony, district, &c. In relation to this he said the defendant is not in any manner charged in the indictment, and, therefore, it is unnecessary to embarrass the court and jury in taking into consideration any facts which relate to an intent on the part of the defendant to enter and enlist himself. Neither has the defendant, nor any other person, been charged with having absolutely enlisted within the territory or jurisdiction of the United States; nor is the defendant, or any one else, charged with having gone beyond the limits or jurisdiction of the United States with the intent to enlist.

What, then, is the charge? What the only issue upon which I ask this court to charge the jury, that the government has made a clear case? It is: first, that the defendant hired and retained some persons to enlist within the limits or jurisdiction of the United States. This crime is charged in two ways in the first two counts in the indictment; and, secondly, that the defendant has within the jurisdiction of the United States hired and retained certain persons to go beyond the limits and jurisdiction of the United States with the intent to enlist when they arrived beyond such limits and jurisdiction. This crime is charged in various forms in the four remaining counts of the indictment.

It is no offence under the statute, in Muhn or Budd, or any one else, to be hired; so that those recruits who have voluntarily come upon the stand and confessed their participation in this lawless transaction have confessed no crime. If A hires B to go beyond the limits of the United States with the intent mentioned in the act, B having agreed with A within the limits of the United States to depart with the intent to enlist, the crime or offence is not committed by B, because he merely engaged with A to go, but the offence is committed

alone by A, who hired him; for, so far as the going beyond the limits of the United States with the intent to enlist is mentioned in the act, the offence consists in hiring or engaging the person to go, and not in being hired or engaged to go. And the court is asked so to charge the jury. Then, as to the intent, what is meant thereby, and who must have such intent? On this point the court is asked to charge the jury, that the intent mentioned in the act is the motive in the mind of the person hired, and has no reference to the design of the person hiring, except that the person hiring believed, or had reason to suppose, the person hired really intended to enlist when he should arrive beyond the limits of the United States, and that he hired him for such purpose. That if the jury, from all the testimony, are satisfied that Hertz, at the time he engaged Muhn, Budd, Weaver, or any other person mentioned in any of these bills of indictment, to go beyond the limits of the United States, and furnished him the facilities to depart, had the intention to enlist in the British military service, then that point of the act which speaks of the intent is sufficiently established.

Believing that the learned court will give the jury in charge the law as he has stated it, Mr. V. called the attention of the jury to the principal features of the evidence in the case. He contended that he had established every point made in his opening remarks.

First. He had shown, by incontrovertible testimony, that the necessities of the British government, resulting from the disastrous condition of their army in the Crimea, and the unpopularity of the cause of the allies at home, compelled them to hazard the enlistment of soldiers within the limits of foreign neutral nations.

Second. That, in the accomplishment of this design, the English authorities at home and their representatives on this continent had, in gross violation of the laws of the United States, concocted and partially matured a plan for procuring within our territorial limits sufficient men to supply the forlorn hopes of an unpopular war, and regain the lost prestige of a waning administration.

In support of these points, Mr. V. adverted to, and commented upon, the testimony of Captain Max F. O. Strobel, Colonel Burgthal, Colonel Rumberg, Dr. Reuss, Mr. Bucknell, and Mr. Budd. The truth of their representations had not been questioned, and the jury are bound, under their oaths, to regard their evidence as conclusive.

Third. That Henry Hertz, the defendant, was an agent of the English government in the accomplishment of this general plan and design. That he had been employed for that purpose by Mr. Crampton, her Britannic Majesty's envoy extraordinary, the highest British functionary known in this country, as also by Sir Joseph Howe, the general agent specially sent to America for this purpose, and by Sir Gaspard le Marchant, the governor of a neighboring British province.

Fourth. That, in pursuance of such employment, this plan was regularly carried out by the defendant. That he did, in the city of Philadelphia, engage at least two hundred men to go beyond the limits of the United States, with the intent to become a part and parcel of the British foreign legion. That in order the more effectually to accomplish this design, he opened, under the auspices of his English

employers, a recruiting office, and advertized in the public papers, and posted through the streets placard's bearing the queen's arms, inviting men to his office. That the persons calling in answer to such proclamations were sent by the defendant to Halifax, who, when there, were attested, and mustered into the military service of the British government.

Fifth. That Mr. Hertz, at the time he was thus engaged in hiring and sending men beyond the limits of the United States, well knew that it was the intention of the persons thus hired and sent to enlist in the service of her Majesty the queen of Great Britain.

Mr. V. argued that the affirmative of each of these propositions was fully sustained by the testimony produced by the government, and called the attention of the jury to that portion of the evidence which severally related to them. He said the character of the witnesses was unimpeached, and that their testimony had been abundantly corroborated by the written evidence which he had been enabled to produce; that there could be no difficulty in finding a verdict of guilty as to the defendant Hertz. That if the jury believed both defendants guilty, they should so find. If, on the contrary, they did not think a case had been made out against Perkins, they should acquit him, and find a verdict of guilty against Hertz; they could separate their verdict.

As to Mr. Perkins, Mr. V. said that he did not intend to press for a conviction where the evidence does not in the clearest manner justify him in so doing; that however much he might himself be convinced of a defendant's guilt, it was his duty to *prove* him so, and that beyond reasonable doubt. From the intimation of the learned court when this case was before it on writ of *habeas corpus*, he presumed his honor would require the government, under the present form of indictment for a statutory offence, to prove an actual hiring or retaining of some one of the individuals mentioned in the bills. Should such be held to be the law under this statute, he was compelled in candor to say to the jury that he had himself, under the testimony, a doubt as to Perkins having been proved guilty. He regretted such was the case; but having brought all the evidence he could to bear against him, he left him in the hands of the jury, without any expression of his private opinion as to that defendant's guilt.

Mr. V. closed his remarks by a severe commentary upon the baseness and perfidy of the persons engaged as the chief actors in this flagrant attempt to violate and evade the laws and treaty obligations of the United States, and expressed the hope that the result of this case would vindicate the action of the government in their determination to maintain our national integrity with every nation of the globe, whether it is or is not in accordance with sinister purposes of Great Britain. By forcing this indictment thus against this defendant the President of the United States has struck as near the throne of her Majesty as he is enabled to do in the shape of a criminal prosecution. The extended privileges and peculiar protection given to a foreign minister prevents, so far as he is concerned, the application of the criminal code of the country, although such foreign minister may be proved guilty of acts which, if committed by a private individual, would make him a felon.

Were it not so, I think I am justified in saying I would this day, by the direction of the President, be trying Mr. Crampton, Sir Joseph Howe, and Sir Gaspard le Marchant, instead of their humble instrument, whose conviction is now asked at your hands. The jury, however, will leave these gentlemen to the only power legally authorized to take care of our public safety, by demanding reparation from their government; and you, gentlemen, may rest assured that in due time they will be called upon by our able and faithful officers at Washington to make proper atonement for the gross insult which they have offered to our laws and our people.

If, on the contrary, after I have in this trial, instituted by the direction and with the cordial approbation of the national administration, proved the defendant so clearly guilty as the instrument and agent of Mr. Crampton and his confederates, you should, on account of any sympathy which may be thrown into the jury-box, acquit him, your verdict will be the strongest argument which will hereafter be used to protect her Majesty's agents in their impudent intermeddling with the affairs of this continent. Confident, however, that you are men devoted to the institutions and political policy of your own country, and, as such, are ever ready fearlessly to defend them, I leave in your hands the honor of the government, and the rights of all those who seek shelter beneath its broad protecting ægis. Weaken not that power of protection by your verdict—stain not that honor by one moment's hesitation in your approval of the determination on the part of the government to preserve every feature of our constitutional vigor, as well from the jealous designs of foreign powers, as from the fanatical treason of domestic foes.

Mr. Van Dyke having concluded, he was followed by Mr. Stephen S. Remak, who made a powerful appeal to the jury in behalf of the defendant Hertz. He spoke for two hours and a half, giving a full history of the case, reviewing the testimony which had been submitted, and dwelling with great power and eloquence upon the law bearing on the subject. It would have afforded us great pleasure to be able to present his speech in full, as taken by our reporter, but want of space forbids.

Mr. Cuyler. May it please the court, gentlemen of the jury: You are weary, gentlemen, and long to be released. I shall detain you but a few minutes by the remarks it is my duty to make to you in this case.

The facts of the case have been elaborately analysed and discussed by my colleague, and I deem it unnecessary to pursue the path in which he has preceded me—in reviewing and digesting the testimony you have listened to so patiently in this case. The duty which has fallen to my share, may it please your honor, is chiefly that of inviting your attention to the view entertained by the defence of the true construction of the act of Congress under which this indictment is framed—trusting, if you shall agree with us in that construction, that the jury will not find in the evidence in this case that a violation of the wholesome provisions of this act of Congress has taken place.

You cannot have failed to notice, gentlemen of the jury, in the progress of this case, that the names of those high in authority and offi-

cial rank have appeared, and often appeared, to be mingled in the transactions from which these indictments have sprung. Mr. Barclay, the consul at New York, Mr. Mathew, the consul at Philadelphia, Mr. Crampton, the British minister at Washington, have all of them appeared as prominent and earnest actors in the scenes which have been detailed in the evidence before you. Among the humblest of all who have been named, is this poor and unfortunate man—a stranger in a strange land, forlorn, friendless, and deserted, for whose conviction the zeal and learning of the district attorney, and the power of the government, have been so earnestly and sternly pressed upon you. And here, pausing for an instant, let me pay my tribute of respect to the learned district attorney, for the candor and liberality with which he has conducted the case, and for the more than usual fulness, perfection, and ability with which he has prepared and managed this prosecution. The power of the government, so ably exerted and directed by him in this prosecution, is in strange contrast with the preparation this poor and friendless man has been able to make for his defence.

I cannot suppose, gentlemen of the jury—I will not suppose—you will not, I trust, suppose for an instant, that these high functionaries of a foreign but friendly state, dwelling within our borders, have consciously either evaded or violated the provisions of any of the laws of the land. You will not believe that these gentlemen of standing, character, and intelligence, have deliberately planned an infraction of the laws of the country, and then left this humble instrument of their designs unfriended to bear the severe penalty of a law broken under their advice and in execution of their requests.

You will the rather, gentlemen, believe with me, that, conscious of their own integrity, and with the law in full view before them, and with experience and capacity to construe the law aright, they so ordered their own course, and so directed their subordinate agencies, that no violation of the law should anywhere take place. This, gentlemen, I trust, you are now about to find. In a word, I shall submit to you that no offence is proven within the construction of the act which I shall ask the learned judge to give you.

May it please your honor, the offence with which this man is charged is unknown to the common law. The right of any man to expatriate himself cannot under our law be questioned, except so far as the statute may have forbidden it to be done under certain particular circumstances, or with a certain intent which the statute forbids and punishes. Such a statute is the subject of strict construction. If the facts are not within its fair spirit and construction, the offence is not made out, and it is your duty to acquit. Now what is the offence created by the statute, in derogation of that which otherwise would not be unlawful or in any way punishable? The second section of the act of Congress of April 20, 1818, under which the indictment is pressed, provides that if any person shall, within the territory or jurisdiction of the United States, enlist, or enter himself, or *hire or retain another person* to enlist, or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, State, colony, district,

or people, as a soldier, &c., "every person so offending shall be deemed guilty of a high misdemeanor," &c.

The offence does not consist, of course, in a person hiring or enlisting, and there is nothing of that kind in the case; but it consists either in hiring or retaining other persons to enlist, or hiring or retaining other persons to go beyond the limits of the United States with intent to enlist. The offence, then, is "the hiring or retaining." Now that means something more than mere persuasion. It does not mean that the mere exercise of an influence which operates upon the reason of a person and induces him to go, creates the offence. It must be a "hiring or retaining," or, in other words, it must be the creation of a legal obligation, or of that which, irrespective of the provisions of this act of Congress, would amount to a contract or legal obligation, and be capable of enforcement as other legal contracts are.

I submit, then, to your honor, this, as the true construction of this act, and I ask you so to instruct the jury.

Now, gentlemen, upon the whole testimony in the case, has the evidence raised in your minds a conviction, free from all doubt, that there existed between Mr. Hertz and any of the several parties named in these indictments a valid, legal, binding contract "of hiring or retaining" them to enlist, or to go beyond the limits of the United States with intent to enlist? If it has not, it is your duty to acquit. Can you upon your oaths, on this testimony, say to me there has been such a conviction established in your minds?

Turn with me for a moment to the testimony. I shall not weary you with its details; but tell me, witness after witness was examined before you, and did they not almost with a unanimous voice tell you that they were not enlisted in the service of any foreign prince or state, nor placed under any obligation to enlist, but simply were to be transported to Halifax, and they were in the exercise of a perfectly free and independent judgment, either to enlist in the service of the queen, or to decline to do so, as they might in their mere discretion see fit to do? It is true there have been several witnesses upon the stand whose testimony might receive a different construction; but remember, gentlemen, the disadvantages under which these witnesses labored. They were foreigners—Germans—who spoke our language imperfectly, incapable of expressing as you or I would do those nicer shades of meaning which are needful to convey a true and precise impression of the facts. You will not say to me that such testimony, and so little of it, will bear down in your minds the full strong current of other testimony, some of it written, and precisely embodying the exact plan and intention, much of it oral, but clear and exact, and perfectly consistent with that which was written, and all showing, beyond question, that no man was "hired or retained" in this country for any purpose whatever, but that they were simply persuaded to go to Halifax, and when there were in the perfectly free exercise of their judgments, in their mere discretion, to determine either to enlist or to refuse to enlist, as they might then choose.

I can feel no doubt, gentlemen of the jury, that you will find this to be the weight of the testimony. If you do, I ask you to acquit. If you do, you will find that there did not exist between Hertz and

these parties a contract such as, irrespective of this act of Congress, would be valid, legal, and capable of being enforced; and so finding, as there was no "hiring or retaining" within the meaning of the act, you will acquit.

Gentlemen of the jury: I represent a very humble man—a poor, desolate stranger. If the law has been violated—which, in view of the construction I have just given you, it plainly has not—there are others upon whom, with more justice, its penalties should be visited. Let us shield this man, whose highest offence, if offence he has committed, is ignorance of the law; and let those wiser men of higher rank bear the penalty. This question should be settled elsewhere, not here. If our laws have been outraged, the government of Great Britain has done it. Let that matter be settled at Washington, and not in an account between the government and this obscure and humble man. But, gentlemen, I will not detain you any longer. You will not, I am sure, find in the facts of the case that the law has been broken anywhere, or by any man. You will not find that mere persuasion is the creation of a legal contract, or that a man who is left free to the unpledged exercise of his own mere discretion has been "hired or retained," within the meaning of this act. And so thinking and so finding, you will rejoice to restore this unfortunate man to his friends and his home, and to the wife and the children who wait for and long to welcome him there.

Mr. Gillou said: May it please the court gentlemen of the jury: If you will bear with me at this late hour of the day for five minutes, I will close my duties within that time. It is the boast of us all that we live in a land of laws. It is our safety that the law is administered by two tribunals—the one explaining the law, and the other applying it to the facts in evidence. The indictments upon which you are to pass—some twelve or thirteen in all—charge the defendant Perkins, together with Hertz, with having enlisted specified individuals, A, B, C. The crime with which he stands indicted, is the enlistment of persons to serve in a foreign country. I have turned my attention carefully to the testimony in this case, because, when counsel makes an assertion to a jury on a point of fact, it is his duty to ascertain that he is right in his statement; and I say, after examining this testimony, that there is not any portion of it which shows any connexion of Perkins with Gilroy, Budd, Casey, or any other person whose name is in any one of these bills as a party sent away or enlisted. If I am right in this statement of the testimony, there is an end of this indictment; for the law requires that the party charged be shown by the evidence to have acted in relation to the particular crime which is averred in the particular bill, and in relation to the particular party, the subject of the crime. You will, therefore, when you take up a bill, remember this, and ask yourselves whether Perkins had anything to do with the hiring or enlisting of the man whose name is mentioned in it. If there is no evidence to show that he had, you will return a verdict of not guilty, as to Perkins; and as you take up each bill, so examine and declare upon it. As to the other defendant, I have not a word to say; my friends

on the other side have fully gone into the case, and given you the law and the facts bearing upon it.

There is this principle which rests at the basis of law, that the crime must be proved to have been perpetrated. Therefore, so far as the defendant Perkins is concerned, consider him not connected in this case with the other defendant, but on trial alone; and then ask yourselves the question, Did Mr. Perkins do anything at all to enlist or get off Gilroy, or any other person? You will find that the burden of the testimony bears directly against such a conclusion, and shows that he had nothing to do with it. I think, therefore, that you will be able to arrive at your verdict readily, and without difficulty. It would be a task of the most painful character if his honor, after hearing the evidence in this case, were to proceed to pass sentence on this defendant, however indiscreet in speech he may have been, as you can but entertain a great doubt of his guilt. The law says, that if you have a reasonable doubt of the guilt of the person charged—such a doubt as would arise in any reasonable mind—such doubt is the safeguard of the defendant, and entitles him to an acquittal. I hope you will have no difficulty in this case, but that at least you entertain a doubt which favors the defendant, and will relieve his honor from passing sentence. I ask you to find a verdict of not guilty as to the defendant Perkins.

Mr. Van Dyke, in reply, said he would follow, with pleasure, the example of his learned friends on the opposite side, and briefly bring this protracted trial to a close. He desired to confine himself strictly to a reply to the positions taken by the counsel for the defendants.

The act of the 20th of April is one of easy and simple construction. The learned gentleman (*Mr. Remak*) who first addressed the court in behalf of the defendants, is wrong in supposing that there have been no judicial decisions which shed light upon the act of Congress. In 1832, *John D. Quincy* was indicted, under the third section of this act, for fitting out and arming a vessel, with the intent that such vessel shall be employed in the service of a foreign prince. The case went up to the Supreme Court of the United States, and is to be found in 6 *Peters' Reports*. It will be observed, upon examination of that case, the law in reference to our neutrality is somewhat different from the general criminal law of the country. The argument there made by *Mr. Williams* for the United States was, that these acts of Congress should be construed according to the meaning and intention of Congress, and, in support of this argument, he cited that part of Judge *Marshall's* opinion on the penal laws of the United States, as reported in the case of the *United States vs. Wiltberger*, 5 *Wheaton*, 95, "that, although penal laws are to be construed strictly, they are not to be so construed as to defeat the obvious intention of the legislature." This argument was answered in an able manner by *Mr. Wirt*; but, Justice *Thompson* delivering the opinion of the court, said, "it was sufficient to establish, by this testimony, the committal of the crime, according to the *plain meaning* of the words used in defining the offence."

The whole policy of our neutrality laws requires a liberal construc-

tion of the statute, if, indeed, it is to be effective in preserving our neutrality between foreign belligerents.

It is also contended by another counsel of Mr. Hertz, (Mr. Cuyler,) that there must have been an absolute contract and consideration paid. This position is not the law, as I understand it. The retaining, whether by coaxing or otherwise, was sufficient. The engaging, which is the meaning of the word retaining, whether by means of present pay or the promise of future compensation, is sufficient.

But here there was an absolute contract. This is a question of fact for the jury; and if they so find, any difficulty on the question raised by the eloquent counsel is avoided. The conditions of the contract were verbal, and its execution was consummated by the signatures of the parties to the roll-book, each one signing that book, clearly understanding what he was to do, and what he would receive for it. That contract stands, for all legal purposes, in the same position as though it had been entirely in writing; and were it not from its very nature and general character void *ab initio*, could be enforced in any court of common law, and the bounty or pay mentioned for the services could be recovered from any private contracting parties. Debts and damages are daily recovered upon agreements much more carelessly made. The terms of the contract were, on the one side, that Peter Muhn and William Budd, and a score of others engaged, should go to Halifax for the purpose of enlisting, and, on the other hand, certain remuneration was to be paid them by the defendant's principal, for the performance of their part of the agreement.

The pay was to be received, it is true, after they arrived at Halifax; part of that pay was the privilege of being received into the Queen's service. They were, also, to receive a free ticket and passage to their destination. This contract was considered so binding, that one of the witnesses tells us that force would be used at the barracks to compel the enlistment when there, and even the poor privilege of repentance was not allowed to the indiscreet and hasty. They were, also, to receive a monthly pay. Now, if this is not an absolute hiring of a party to enlist, then nothing is, and the act of Congress is a dead letter, and should be repealed.

Mr. Cuyler. What was it a contract to do?

Mr. Van Dyke. A contract, sir, to go beyond the limits of the United States with the intent to enlist in the British service. And, if any doubt existed on the question of intent, such doubt is removed by the indisputable fact that the men actually did enlist, and are, in all probability, at this moment in the Crimea.

It is admitted that the parties who make this contract must be indicted in the district where the contract is made—in the place where the parties are engaged. In a case which has recently been tried before the United States district court for the Massachusetts district, the case of *United States vs. Lewis Kazinski*, reported in 8 Monthly Law Reporter, p. 254, the prosecution failed, substantially, because the hiring took place in New York, and the trial was had in Boston: the court ruling that the expression of intent made in New York could not be given in evidence, and confined the prosecution to ex-

pressions of intent made in the district where the crime was charged to have been committed ; and the recruits on board the vessel upon which they were arrested having expressed a different intent from that expressed at the time of hiring in New York, the cause failed, among other reasons, for the want of the proof of the intent required by the act. *Exempli gratia* : to make the case more intelligible, suppose the party which left Philadelphia on the 25th of March, in the charge of Captain Strobel, had after their arrival within the limits of the southern district of New York, expressed their intent to be to go to Halifax to work on the railroad ; and Mr. Strobel, who had in fact, assisted to engage the men in Philadelphia, had been arrested, and, under the second section of the act of 1818, indicted in the southern district where he happened to be found in charge with the recruits, and the able prosecuting officer for that district should offer to prove the expressions used by the recruits in Philadelphia as to their intent when arriving in Halifax ; the court would hold him to the proof of expressions of intent made in the southern district of New York, where the offence of hiring and engaging is charged to have been committed ; and particularly so when the fact is brought to the knowledge of the court, that the evidence as to the intent expressed in the two places differ most materially and substantially. Now, this was the case of the United States *vs.* Kazinski, and for this want of sufficient proof of the *intent*, in the district where the trial took place, the defendants were acquitted.

But this case is important for other reasons. It settles two of the fundamental questions which must arise in every prosecution under the second section of this act of Congress.

First. The meaning of the term *hiring* or *retaining*, which is to be construed in its every day acceptation, and is virtually nothing more than “engaging”—the word used by the learned judge.

Secondly. That the hiring must be within the district where the crime is charged to have been committed ; and I have shown that such hiring, so far as it could be consummated anywhere, was actually done here.

A single word in reply to the remark of Mr. Cuyler, as to the propriety of prosecuting this defendant, while persons of more importance are permitted to pass unpunished. I agree with my learned friend that it is rather unfair, in one sense, that Mr. Hertz, the mere humble instrument of a great nation, should suffer for the acts of his superiors. But Mr. Hertz was a free agent, and acted voluntarily in the whole affair. He sought for and obtained the position under Mr. Crampton and Mr. Howe, which enabled him to violate our law ; and he has no right to complain if he suffers the penalty of his own wilful misconduct ; and it is the duty of the jury, if they believe him guilty, so to find him. You will also recollect, gentlemen, that the prosecution of this defendant was the only means by which the Executive of the United States could be best informed of the impropriety of the conduct of those representatives of the British government who have been accredited as fit and honorable men, claiming peculiar privileges near our government. I have no doubt that this trial has furnished such information, and that such steps will be adopted as are sanc-

tioned by international law. But with that you have nothing to do here. Your only duty is to impartially inquire into the conduct of Mr. Hertz and Mr. Perkins, and to render a fair verdict under the evidence. With that verdict, whatever it may be I shall have no complaint to make.

Mr. Van Dyke having concluded, Hon. John K. Kane charged the jury as follows :

I intended, gentlemen of the jury, when we separated, to avail myself of the leisure afforded me to put my charge in writing ; but I have been prevented by controlling circumstances from doing so, and my remarks to you, therefore, will be less closely connected, perhaps, though I trust they will not be on that account less intelligible and clear.

The case has involved, in its progress, a train of facts of very considerable political interest—perhaps of more general interest in that aspect of it, than in its bearing on the questions which are to be decided by your verdict. There are very few among us, probably none, who have not felt aggrieved at the tone with which the press of foreign countries, and occasionally of foreign statesmen of the day, have commented upon what they have been pleased to call *over-alacrity* of the American people to engage in military controversies in which they properly had no rightful part. Our people and our government have been accused of forgetting the obligations of neutrality, and pushing ourselves forward into the conflicts of foreign nations, instead of minding our own business as neutrals, and leaving belligerents to fight out their own quarrels. For one, I confess that I felt surprised, as this case advanced, to learn that during the very time that these accusations were fulminated against the American people by the press of England there was, on the part of eminent British functionaries here, a series of arrangements in progress, carefully digested, and combining all sorts of people, under almost all sorts of influences, to evade the laws of the United States by which our country sought to enforce its neutrality ; arrangements matured, upon a careful inspection of the different sections of our statutes, ingeniously to violate their spirit and principle without incurring their penalty, and thus enlist and send away soldiers from our neutral shores to fight the battles of those who were incontinently and not over-courteously admonishing us to fulfill the duties of neutrality.

I allude to these circumstances, and this train of thought, gentlemen, not because it is one that should influence your action as jurors, but because I feel it my duty to guard you against its influence. The question which you have to decide is, not whether there has been an effort on the part of any foreign functionary to evade the provisions of our acts of Congress, but whether these two defendants have or have not violated the provisions of the act of Congress, which are cited in these bills of indictment ; your verdict will respond to the simple question, are these two men guilty of the crime with which they are charged ?

In order that my remarks may not hereafter be embarrassed by the necessity of using the plural when the singular is more appropriate, I will say to you, at the outset, that there is no evidence against one of

these defendants. Before a jury can properly convict an individual of a crime, they must be satisfied, by clear evidence, that the crime has been committed by some one. We have no statute which affects to punish braggart garrulity; and, unless the particular offence of enlisting certain definite persons has been committed by Perkins, one of the defendants, though he may have proclaimed upon the house-tops that he has recruited armies innumerable, no jury can properly convict him of the offence he professes to have engaged in.

I pass to the consideration of the case of the defendant Hertz. He stands indicted, sometimes jointly with another, sometimes alone, with the offence of having hired and retained certain persons to go out of the United States for the purpose of enlisting and entering themselves as soldiers in the service of a foreign prince, state, or territory.

The act of Congress is in these words—I read the words material to the question, leaving out those which apply to a different state of circumstances:

“If any person shall, within the territory of the United States, hire or retain any person to go beyond the limits of the United States, with intent to be enlisted in the service of a foreign prince, he shall be deemed guilty of a high misdemeanor.”

The question which you have to pass upon is, Did Henry Hertz hire or retain any of the persons named in these bills of indictment to go beyond the limits of the United States, with the intent to be enlisted or entered in the service of a foreign state?

Did he hire or retain a person? Whatever he did was within the territory of the United States.

The hiring or retaining does not necessarily include the payment of money on the part of him who hires or retains another. He may hire or retain a person, with an agreement that he shall pay wages when the services shall have been performed. The hiring or retaining a servant is not generally by the payment of money in the first instance, but by the promise to pay money when the services shall have been performed; and so a person may be *hired* or *retained* to go beyond the limits of the United States, with a certain intent, though he is only to receive his pay after he has gone beyond the limits of the United States with that intent.

Moreover, it is not necessary that the consideration of the hiring shall be money. To give to a person a railroad ticket that cost four dollars, and board and lodge him for a week, is as good a consideration for the contract of hiring, as to pay him the money with which he could buy the railroad ticket and pay for his board himself. If there be an engagement on the one side to do the particular thing, to go beyond the limits of the United States with the intent to enlist, and on the other side an engagement, that when the act shall have been done, a consideration shall be paid to the party performing the services or doing the work, the hiring and retaining are complete.

The meaning of the law, then, is this: that if any person shall engage, hire, retain, or employ another person to go outside of the United States to do that which he could not do if he remained in the United States, viz: to take part in a foreign quarrel; if he hires another to go, knowing that it is his intent to enlist when he arrives

out; if he engages him to go because he has such an intent, then the offence is complete within the section. Every resident of the United States has a right to go to Halifax, and there to enlist in any army that he pleases; but it is not lawful for a person to engage another here to go to Halifax for that purpose. It is the hiring of the person to go beyond the United States, that person having the intention to enlist when he arrives out, and that intention known to the party hiring him, and that intention being a portion of the consideration, because of which he hires him, that defines the offence.

I believe that after making this comment upon the law, I might pass on to the facts; but it occurs to me to add, that you are not to require proof of the connexion of the defendant with each particular fact and circumstance which has been given in evidence to show the working out of the general plan.

If you believe the witnesses, the object here was to effectuate an enlistment beyond the borders of the United States, and yet escape from the provisions of this section; to do effectively, and yet not seem to do. If you are satisfied—no matter what was the avowed object of the party, no matter what the pretext, if you are satisfied that Henry Hertz was here engaged in hiring and retaining men to go off to Nova Scotia, there to enlist, that being their intention, and he believing that it was so, and therefore hiring them; then, no matter what was the costume or mask which the transaction wore, he has committed the offence charged in the bill of indictment.

As to the evidence, gentlemen, you have listened to it very carefully, and it has been commented upon abundantly. I do not know that it is my duty to detain you by a single remark on it. It is all on one side. Whether it establishes the fact is for you to judge. The enlistment necessarily includes the action of different parties; the concert between them is to be inferred from their acts. The intention of the party engaged or retained to enlist, is to be gathered from his conduct and declaration here, from his conduct after he reaches the foreign country, and from the action of third persons with whom he perfects the enlistment that he may have contracted for here. You are, therefore, while looking primarily at the conduct of Hertz, to look also at the actions of others tending to the same objects; and if you judge that they were actually in concert with him, then all their acts, done in pursuance of the common purpose and plan, are to be regarded as his. With these remarks I leave the case in your hands.

At the conclusion of the judge's charge, the jury retired, and returned in about fifteen minutes. On taking their seats, the clerk of the court, in the usual form, put the question: "Gentlemen of the jury, have you concluded upon your verdict?" To which the foreman replied, "We have."

Clerk. How say you, guilty or not guilty?

Foreman. Guilty as to Henry Hertz, in manner and form as he stands indicted on all the bills of indictment; as respects Emanuel C. Perkins, not guilty.

The jury were then discharged. Sentence deferred for the present.

And now, September 29th, 1855, Theodore Cuyler, esq., and

Stephen Remak, esq., for Mr. Hertz, move for a rule for a new trial, and, by leave of court, file the following reasons :

UNITED STATES	{	In the district court of the United States, sur indictment for unlawful enlisting, &c.
vs.		
HENRY HERTZ.		

1. That the learned judge erred in admitting in evidence proof of the acts and declarations of other persons, done and said in the absence of defendant.

2. The learned judge erred in his construction of the language and meaning of the act of Congress of 1818, under which these indictments are framed. That he held, and so instructed the jury, that the words "hire or retain," employed in said act, would be satisfied by less than an absolute contract, founded upon sufficient consideration, and capable of legal enforcement if the same were not made unlawful by the provisions of said act.

3. The weight of the evidence was clearly and decidedly that no person was "hired or retained to enlist, or to leave the United States," with intent to enlist ; but the several persons sent to Halifax were engaged to go, and were sent there, with the distinct understanding that they were there to determine whether they would or would not enlist, and were, *until then*, entirely free and at liberty, bound by no contract or engagement, and therefore having no intent, &c., within the meaning of the act of Congress.

4. The verdict was against the evidence ; and

5. The verdict was against the law.

THEODORE CUYLER,
STEPHEN S. REMAK.

And now, October 12, 1855, the motion for a rule for new trial coming on before honorable John K. Kane, is argued by Theodore Cuyler, esq., and Stephen S. Remak, esq., for the motion ; and the same being denied, and new trial refused—

Mr. Van Dyke said : The motion of the defendant for a new trial being refused, I ask leave to present to this court the confession which has been made to me by the defendant, Henry Hertz.

This prosecution has not been merely local in its tendencies, nor the influence of its results likely to be confined to the sphere of an ordinary prosecution in this district. Its results are of a far more extended importance.

The disclosures made in the progress of this cause may be the ground-work of an important step on the part of the federal government in relation to those who have been instrumental in producing that system of interference with our affairs, which has formed the basis of this prosecution. I am permitted to say that the trial which has just resulted in the conviction of this defendant was authorized by the national Executive ; and before making the motion which I intend to submit to your honor, I beg leave to read the instructions which I have received in relation to this trial.

Being aware that the system of enlistments had been effectually broken up by the prompt execution of the warrants which I had caused

to be issued for the arrest of various parties, and by the efficient aid which Mr. Wynkoop, the marshal of this district, and his officers, had otherwise furnished me in ferreting out the system adopted for the evasion of our laws, I had supposed there might not be any urgent necessity in pressing the prosecution of the defendants who have just been tried, and had written to the Attorney General of the United States, asking whether it was the desire of the administration further to press these prosecutions. To which I received the answers dated September 12, 1855, and also the letter dated September 17, 1855; both of which I shall take the liberty of reading to the court.

Mr. Van Dyke read the letters as follows :

“ ATTORNEY GENERAL’S OFFICE, *September 12, 1855.*

“ SIR : In reply to your letter of the 10th instant, on the subject of the indictments pending against persons charged with recruiting for the military service of Great Britain, I have the honor to make the following observations :

“ Mr. McKeon has been advised of the desirableness of conferring with you personally, either by himself or his assistant, in regard to new evidence to which he may have access, and which can be useful to you.

“ I suggest the expediency of trying only *a part* of the cases now, especially if you fail to convict in some leading case.

“ But the most important consideration is this :

“ This government has, of course, addressed to that of Great Britain such demands of public redress and satisfaction in the premises as the national honor requires. But the government of Great Britain, with extraordinary inattention to the grave aspects of its acts—namely, the flagrant violation of our sovereign rights involved in them—has supposed it a sufficient justification of what it has done, to reply that it gave instructions to its agents so to proceed as not to infringe our municipal laws ; and it quotes the remarks of Judge Kane in support of the idea that it has succeeded in this purpose. It may be so. Judge Kane is an upright and intelligent judge, and will pronounce the law as it is, without fear or favor. But if the British government has, by ingenious contrivances, succeeded in sheltering its agents from conviction as malefactors, it has, in so doing, doubled the magnitude of the national wrong inflicted on the United States.

“ This government has done its duty of internal administration in prosecuting the individuals engaged in these acts. If they are acquitted, by reason of a deliberate undertaking of the British government, not only to violate, as a nation, our sovereign rights as a nation, but also to evade our municipal laws, and that undertaking shall be consummated by its agents in the United States ; when all this shall have been judicially ascertained, the President will then have before him the elements of decision, as to what international action it becomes the United States to adopt in so important a matter.

“ I am, very respectfully,

“ C. CUSHING.

“ JAS. C. VAN DYKE, Esq.,

“ *United States Attorney, Philadelphia.*”

“ ATTORNEY GENERAL’S OFFICE,
September 17, 1855.

“ SIR: I desire to make a further suggestion in regard to the trial of parties charged with recruiting soldiers in the United States for the service of the British government.

“ It is known that instructions on this subject were given by that government to its officers in the United States. We are told by Lord Clarendon that those officers had ‘stringent instructions’ so to proceed as not to violate the municipal law—that is, to violate its spirit, but not its letter. If so, the instructions themselves violate the sovereign rights of the United States.

“ But, in the meantime, every consul of Great Britain in the United States is, by the avowal of his government, subject to the just suspicion of breach of law; while, apparently, he must either have disobeyed his own government, or, in obeying it, have abused his consular functions by the violation of his international duty to the United States.

“ In these circumstances, it is deemed highly necessary that the British consul at Philadelphia, or any other officer of the British government, shall not be suffered to interfere in the trials, as he attempted to do on a previous occasion; that no letter of his be read, except in the due form of evidence; and that, if he have anything to say, he shall be put on the stand by the defence, in order that he may be fully cross-examined by the prosecution.

“ It is clear that he has no right, by any rule of public law or of international comity, to be heard in the case by the court, otherwise than as a witness, whether enforced or volunteer.

“ I have the honor to be, very respectfully,

“ C. CUSHING.

“ JAS. C. VAN DYKE, Esq.,

“ *United States Attorney, Philadelphia.*”

Your honor will perceive that the object in this prosecution has been as much to break up the general system which had been adopted by the British government to violate our municipal laws, as it was to punish those who should be found guilty as the instruments of that government.

If the present defendant, since his conviction, has contributed in any manner to aid the government in this investigation, and that aid has been the result of a sincere regret and repentance for his past conduct, it is, in my opinion, but just that he should have the benefit of his present conduct in the sentence which your honor may see fit to pronounce in his case.

I therefore move that the defendant’s confession be read, and that it be filed of record among the proceedings in the cause, to be duly considered by the court in the judgment which may hereafter be pronounced against the defendant.

Per curiam. Let the paper be read and filed of record.

The confession is as follows :

UNITED STATES	{	In the district court of the United States, in and for the eastern district of Pennsylvania.
vs.		
HENRY HERTZ.		

United States, eastern district of Pennsylvania, ss.

Be it remembered, that on this 11th day of October, A. D. 1855, before me, Charles F. Heazlitt, a commissioner of the United States, personally came Henry Hertz, who, being duly sworn, says :

That some time in the month of January, 1855, I read in the London *Times* a notice of the passage of a resolution of the British Parliament, authorizing the enlistment of a foreign legion. A day or two afterwards I went to the United States Hotel, where I heard three or four gentlemen speaking of this country as a place where enlistments could best be made. One gentleman by the name of Miller pointed at me, as the man best fit for enlisting men for the British service, because, as he said, I am so well known among the German and foreign population. One of the gentlemen sitting there arose and said to me, "I am an English officer ; I am not particularly engaged in this matter now, but I can tell you how to embark in it without running any risk, and I would be glad if you would engage in it ; but, in order to accomplish this, it is necessary for you to go to Washington and see Mr. Crampton, the English ambassador."

From what I learned afterwards, the name of the gentleman was Mr. Bruce McDonald. Two or three weeks afterwards I went to Washington, and was introduced by many gentlemen by letters to Mr. Crampton. I had obtained these letters without telling those gentlemen the object of my visit ; but, before delivering any of these letters of introduction, I addressed a note to Mr. Crampton, requesting an interview with him ; that note did not state the object of the interview. The principal object of my visit to Mr. Crampton was to ascertain whether I could safely embark in this enterprise. I was stopping at Willard's Hotel, and in reply to my note, I received the note hereto annexed, marked A. (C. F. H.) (This note has been published in Mr. Strobel's testimony, and will be found, *ante*, at page 145.) After the receipt of this note I called on Mr. Crampton, at his residence ; it was on Sunday morning when I called ; I saw Mr. Crampton ; he said, in substance : "Your letters of introduction assure me that I may have full confidence in you ; I have not sufficient authority yet from the home government with regard to the matter, but I expect early authority from Lord Clarendon. I have already received a letter from Lord Clarendon, inquiring how many men might be enlisted in this country for British service, and what the United States government would think of such an attempt. I can tell you this ; that if you embark in this matter, you can make a great deal of money ; if procuring of men for the English service should be undertaken, it will be very advantageous to you ; but I expect a letter from Lord Clarendon by the next steamer, which may be expected in eight or ten days, giving me full explanations and instructions how the matter is to be conducted." In this conversation he had reference to enlistments in this country for the Crimean war. He stated that he had

answered Lord Clarendon's first letter, and that the letter he expected was in reply to his answer. He did not state the contents of his answer to Lord Clarendon's letter. He then said, "I have nothing more to tell you to-day, but when I receive Lord Clarendon's letter I will write to you." I returned to Philadelphia, and should have thought nothing more of the subject, but about the 5th of February, 1855, I received a letter from Mr. Crampton, through the post office, which letter is hereto annexed, marked B. (C. F. H.) (The letter referred to is published *ante*, second letter on page 145.) I sent him a telegraphic dispatch, that I was too much engaged to come to Washington now, but that I would call upon him at Washington as soon as my time would permit it.

I went some days afterwards (say three or four days) to Washington, and saw Mr. Crampton at his private residence; he was indisposed. I told him I had received his letter, and desired to know what I had to do. Mr. Crampton replied, "I have received a letter from Lord Clarendon, which contains the statement that the British government has made arrangements to establish depots at some places in Canada, on the frontier of the United States, in order to receive the men who may be procured in the United States. In pursuance of this information, I have sent my special messenger to the governor general of Canada, and to the commanding general of the troops in Canada, (whose name I believe is Roy,) requesting them to designate the places where depots may be established for the reception of persons who may be procured in the United States." I informed Mr. Crampton that I had incurred expenses already by coming twice to Washington, and that I would have to waste more time until the messenger returned, and that I would have to neglect my business; I therefore requested him to refund to me the expenses already incurred by me. Mr. Crampton replied, "I have at present no money at my disposal, and have no authority to give you any; but I am certain you will be paid not only for your services, but that your expenses will be repaid to you." I asked Mr. Crampton what was to be done? How is the matter to be conducted? He said, "As far as I know, there is a law in the United States forbidding the enlisting of soldiers within the territory of the United States; it is, however, not difficult to evade this law, because who can prevent you from sending laborers to Canada? But we must take care to do this in such a way that it shall not appear in defiance of the government. My idea is, further, that if you have 25 or 30 men together, either yourself or some other confidential person should take them direct by railroad to Montreal, where, I think, a depot may be erected." I then asked him, "When do you think this matter will commence?" Mr. Crampton said, "I cannot say precisely yet, because my messenger will perhaps be prevented from returning to Washington very soon, as the roads are obstructed by ice and snow. It is possible that he will call on you at Philadelphia on his return from Canada, and will give you the necessary information. In the mean time, you may call on our consul, Mr. Mathew, in Philadelphia, and he (Mr. M.) will probably be able to give you the necessary instruction." The conversation with regard to the procuring men was finished, but I reverted again to the law bearing upon the

subject. I asked him, "How am I backed in case a charge is made against me? I have a wife and children."

Mr. Crampton replied, "First, that the law was exceedingly lax; and, secondly, that if anything should happen, the British government would not allow any one to suffer who had been engaged in assisting them in furnishing the men." I replied that "The popular voice is against this matter;" but Mr. Crampton said, "Never mind about this popular voice; if a house in Liverpool fails, the whole United States trembles." After Mr. Crampton had given me such assurances, and had used the expression, "I give you my word as a gentleman that nothing unpleasant shall happen to you," I then made up my mind to act for the British government. Before I left Mr. Crampton assured me that he would send a man to my house in Philadelphia, who would make such arrangements with me as would enable me to procure men, and send them to their destination. I then returned to Philadelphia, and waited ten days without hearing anything of the matter. I called then on Mr. Mathew, the British consul in this city. Mr. Mathew received me very politely, and informed me that he was just reading a letter from Mr. Crampton, in which my name is mentioned. He further said, "We (speaking of his government) are very anxious to procure men; but, alas! we have not received any instructions from Canada as to where the depots are to be erected; however, we expect every day and every hour the return of the messenger." About three, four, or five days after that I visited Mr. Mathew again; he then said to me, "I would advise you to go down to Washington again, for," said he, "although I do not know of any of the particulars of the case, yet I have no doubt Mr. Crampton does, and can give you all the information necessary." This was about the 15th of February. I went to Washington again, and saw Mr. Crampton, though he was indisposed. All that I could learn from him was, that in a week or two he would send a man to my house in Philadelphia; this man, he said, he expected would be sent from the government in Canada to my house, with instructions and means for the recruiting of men in this country. In this conversation Mr. Crampton also stated to me that if I should get into any difficulty I should employ eminent consul. He also said that, so far as he could ascertain, the government of the United States would not interfere in the matter. I must distinctly aver that, in particular, this last statement and representation on the part of Mr. Crampton gave me such full assurance that I did not, for one moment, think it possible that I could be charged with a misdemeanor or crime. I thought that the matter had been privately arranged between the United States and the English government; Mr. Crampton endeavored to, and did, leave that impression on my mind. I was led so to believe from what Mr. Crampton said to me. I returned to Philadelphia, and in about a week afterwards, on returning home from my office one day, my wife handed me a slip of paper, on which was written "Joseph Howe, Jones' Hotel, parlor No. 1." She stated that the gentleman whose name was on the paper called and spent with her two hours waiting for me. After dinner, on the same day, I called on Mr. Howe at his hotel, and saw him; he asked my name, which I

gave him. He said he was extremely glad to see me, as his time for staying in Philadelphia was very limited; that he had to go to New York and Boston, where his agents expected to see him in a few days. I asked him what authority he had for engaging me to enlist men for the foreign legion? He answered, "I am authorized by the governor, Sir Gaspard le Marchant, of Nova Scotia, who, in accordance with instructions from the English government, is the only man who had control of the enlisting service for the foreign legion, and the especial control over the dépôt in Halifax, established for the men procured in the United States." I told him, "This is all very well, but I have not the pleasure of knowing the governor." He answered me, "Mr. Crampton has given me your directions, and recommended you as a man in whom I can place full confidence." I answered him "that I would believe anything; but I should like to see some documents from Mr. Crampton." He said, "I am sorry that I cannot show you such at present, as the only document I have received from Mr. Crampton was an introduction to Mr. Mathew, and that letter I have already delivered." I said, "I would be satisfied if Mr. Mathew would corroborate his statement, and then I would be willing to act on his proposition." He asked me to see him again the next morning at 9 o'clock. I called at 9 o'clock the next day, and met there Captain Rumberg, Lieutenant Van Essen, and another gentleman by the name of Link, a friend of Mr. Van Essen. Mr. Howe introduced me to those gentlemen, whom I knew before, but had never any conversation with them about the recruiting business. He (Mr. Howe) said, "Gentlemen, I suppose you know Mr. Hertz: he is the only confidential agent for the State of Pennsylvania to get men for the foreign legion." I said to him, "I have not got so far yet, and stand upon my demand of yesterday," referring to his statements being corroborated. He said, "That is all right; that gentleman" (meaning Mr. Mathew) "knows you already."

"This interview was on the 13th March. He said, "I am glad to hear that Mr. Mathew has made all inquiry about your character, and feels fully satisfied." Mr. Howe then said to Mr. Rumberg that he would get a colonelship, and Van Essen a captaincy, and told me by all means to send off those men (Mr. Rumberg and Mr. Van Essen) with the first transport, in that capacity. I answered, that if I was satisfied I would do so. He bowed to these gentlemen, and begged to be excused, as he wished particularly to speak with me alone. They went away. Mr. Howe then said, "I have heard from Mr. Crampton that you are a man of limited means; and as means are necessary, he could furnish me with any amount." I told him I wanted £250 to £300 to start with. He answered, "That is only a trifle. You need not be economical, as money was no object at all. I cannot give you more than \$500 at present, as I have drafts on different places, which I will put in the hands of one man, and this man would get authority from me to furnish you with the means you want." "That it would be necessary to get men as quick as possible, and for this purpose I think it would be best to insert some advertisements in the German papers, and in the English papers that are most read by the Irish population, who are her Britannic Majesty's

subjects." I asked him what he meant to insert or advertise—if he thought it proper that I should call for volunteers. He said "that will not do, but I will write you an advertisement which you may insert immediately, without running any risk." He wrote this paper (here-to annexed, marked C. C. F. H. This paper is the original proclamation, published *ante* on page 144,) in my presence, and delivered it into my hands. He also wrote a contract for me to sign, in which I acknowledged myself to be a referee for the governor of Nova Scotia, and was willing to send men. I was to receive \$8 for each man sent to Halifax, and extra for each man that was competent to be an officer, £4 extra; and for sergeants I was to receive \$4 extra. I did not know at the time that this contract was illegal, and have never received anything for any services I rendered Mr. Howe. Mr. Howe stated in this conversation, in the presence of Rumberg, Van Essen, and Link, that Mr. Crampton had given him the direction of each of us, (referring to Rumberg, Van Essen, and myself,) as the only persons with whom he was to confer in this city, and that Rumberg and Van Essen had been highly recommended to Mr. Crampton by some French ambassador.

He then went to his writing desk, took \$300 out, and was handing them to me. I told him, "I do not take any money from you." I had so told him once before, as I actually wanted the money through the hands of Mr. Mathew. I was at this time still doubtful whether I should embark in this enterprise, as all I have been stating now was mere conversation; and I had not done anything at all that could make me liable in any shape or form. I desired to test the question whether I should act or not, thinking that Mr. Mathew would not play any part in this affair if it would be against the law of the country, and I therefore asked that the first step be taken by him.

Mr. Howe then said, "if you would prefer that Mr. Mathew should give you the money, it shall be done so." I answered, that his doing so was a great object to me, as he (Mr. Howe) was only a transient visitor, and could leave the States any time he was disposed; but Mr. Mathew, as a British functionary in this city, would feel himself bound to cover me if anything should happen, or any charge should be made. He said, "I am very glad to hear that you are so cautious, and I will meet your wishes; please call to-morrow morning here at 9 o'clock, and if I have not left the city, I will take you to the room of Mr. Mathew in the same hotel, and he will give you the money; but if I have left, go to Mr. Mathew in his office, and get the money there, if he has not before sent it to your house. I asked him why he staid at Jones' Hotel; he said, as the British consul stopped there, he did so. We shook hands, and I went away. In the course of this conversation, Mr. Howe remarked, "there is no necessity to be afraid of anything; the laws of the land here are but poorly enforced, and £100 might purchase all the laws of the land."

On the morning of the 14th of March I went to Jones' Hotel; Mr. Howe had left, but Mr. Hicks, the book-keeper of Jones' Hotel, handed me an envelope without an enclosure; on the fly or fold of the envelope were written these words: "Go to Mr. Mathew; it is all right." I went to Mr. Mathew's office and saw him there; he told me "he

had just sent his clerk up to my residence, 424 North Twelfth street, with \$300, which Mr. Howe had requested him to give me; and if I would stay there, or come back again in a quarter of an hour, his clerk would be back, as he wished to have me give a receipt for the money." I remained and conversed about the best plan to begin the matter. Mr. Mathew observed that he would be glad to assist me in anything, but it must be a secret, as his official standing would not permit him openly to have anything to do in the matter. The clerk returned, when the conversation ceased at a signal given to me by Mr. Mathew. The clerk handed the packet to Mr. Mathew, and Mr. M. counted to me \$300, and I took the slip of paper marked D. C. F. H., in which the money had been enclosed to me. The following is a copy of this paper, in the handwriting of Mr. Mathew:

"Mr. Howe requests the \$300 sent may be given to Mr. Hertz, on his receipt in Mr. Howe's name."

He handed me a slip of paper, and asked me to give him a receipt. He said, "be careful to put Mr. Howe's name in it." I wrote the receipt in these words:

"Received, Philadelphia, 14th March, 1855, of Mr. B. Mathew, three hundred dollars on account of Hon. Mr. Howe."

Mr. Mathew stated further, that "if you want anything for vessels, or means of conveyance, you must go to Mr. Henry Winsor, on the wharf near Pine street, and he will furnish you with anything in his line; that he (Mr. Winsor) had moneys in his hands, or under his control, belonging to Mr. Howe."

I took an office on the 14th of March, and went to the *Pennsylvanian* and *Ledger*, and inserted the advertisement written by Mr. Howe. The *Ledger* notice was an abstract; the *Pennsylvanian* inserted it at length. Mr. Rumberg attended to the advertisements in the *Democratic Free Press*. On the 16th of March the business commenced; plenty of men came, and the first day I had so many that I could make a transport. I went down to Mr. Winsor and told him I wanted a conveyance for about 100 to 140 people to Halifax. He said, "There is no possibility to get it from here direct to Halifax, but means are procured to send them from here with his steamers to Boston, and there the regular packets would take them to Halifax; but, at all events, it would not be possible to send such a number before Saturday, the 24th, as the steamer would not go before. I was placed in an unpleasant position, as those men were very poor, and were anxious to start. I was, therefore, necessitated to give them a little money to live. I believe it was the 16th or 17th, in the afternoon, about nine or ten persons, calling themselves English subjects, came to my office. They told me they had just come from the British consul, who had sent them to my office to get tickets, which were left there the same day in the morning by T. L. Bucknell. I told them I would give them tickets if they would bring me a written receipt from Mr. Mathew, as I had my instructions to use those tickets with discretion. They went away; in about half an hour after, a message was sent from Mr. Winsor wishing to see me. I went down; he presented me a letter, addressed to him from Mr. Mathew, in which he desired that Mr. Winsor should get tickets from me, and furnish the people

who had called upon me as English subjects with free passage by the schooner Bonita, of Halifax, Captain Coffin, then lying at Pine-street wharf, and pay the captain \$12 for each ticket returned by the captain to Mr. Winsor. I gave Mr. Winsor eight tickets, and he gave me the receipt hereto annexed, marked E. C. F. H. (This receipt will be found *ante*, page 184;) and I saw the captain give to Mr. W. a receipt for \$96, as the captain had returned the eight tickets he had received from Mr. W. to him, and bound himself to deliver up those men in Halifax; and further, to return to Mr. Winsor \$12 for each man he should not deliver up in Halifax. The captain took the eight men in his schooner, and sailed with them that evening. The same day I wrote a letter to Mr. Howe asking for funds. Mr. Howe's direction was given me by Mr. Mathew. The following morning I got a telegraphic despatch, directing me to call on Mr. Winsor and get funds. I went to Mr. Winsor, and told him I wished \$500. He told me that he had an order to pay me \$100 only; that Mr. Howe would be here, perhaps, that day or the day after, and he would furnish me with more. At the same time, Mr. W. told me that the steamer Granite State did not belong to him any more, that he had sold her to another firm, and he did not think that the firm would pay a charter for taking passengers; that he did not know, therefore, how he would act to-morrow, as he could not procure any other vessel. I telegraphed directly to Mr. Bucknell, asking him what I should do to get conveyance for my "brave people." I did not get any answer. The reason why I telegraphed to Mr. Bucknell was, that he was the only man to assist the agents in sending away men. Bucknell told me he was the only man that was authorized by Mr. Howe to assist the agents in sending the men to Halifax, as Mr. Howe himself was very much occupied, and travelling from one place to another. To get the people away, I went down to Sandford's line, and made an agreement with Mr. Eldridge to pay him \$4 for each man he would take in his steamer to New York, if he could delay the departure of the steamer till Sunday. I wanted to have time to send the men by the steamer Sandford. As Mr. Eldridge did not know me, Mr. Winsor went in and told him that everything that I did he would be responsible for. On the 25th, in the morning, the people were ready to start at five or six o'clock; but as I had no money to furnish Mr. Strobel, who had command of the party, I went up to Mr. Mathew at Jones' Hotel, in his room, at five o'clock, and told him the people were there by the wharf, but Captain Strobel was not willing to start without money, and the poor people wanted to have money in their pockets. He got out of his bed and got \$50 and handed it to me, saying, "if that is not enough, I will give you more." I went down to the wharf and gave \$25 to Mr. Strobel, and divided the balance among the men who were going—eighty or ninety people. These people were those I had engaged at my office to go. They went off to New York. I went the same night, the 25th, to New York, and went to Delmonico's Hotel, where I found Mr. Bucknell sleeping in Mr. Howe's room. I told Mr. B. that the people either were there, or would come, as they left this morning, and asked how they were to be conveyed to Boston. I also told him that Mr. Strobel would be there and receive his

further orders. Mr. Bucknell said that he would make it all right ; that I should go to Mr. Barclay, at his private residence, College Place, and he (Bucknell) would soon be there to make further arrangements. I went away and returned to Delmonico's in about an hour. I met there Mr. Strobel, who had arrived ; he told me that he wanted money to feed the people ; that he was obliged to take them in four different parties, to four different boarding houses in Greenwich street. Mr. Bucknell came down, and we went up to his private room, when he told me that he would go with us himself to Mr. Barclay, at his office in Barclay street, and that I should go with him. I went with him, and he and Mr. Barclay went into an inner room. Mr. Bucknell then came out and told me to wait in his private room at Delmonico's, that he would come directly and bring the money. He came and gave me \$100, which I delivered in his presence to Mr. Strobel, less \$5. I gave him \$80 at that time, and had given him \$15 before, that morning. We went together to the Astor House, where Mr. Bucknell telegraphed to Mr. Mathew to tell Mr. Cumberland (which means Mr. Howe) not to leave Philadelphia without seeing Mr. Hertz. Mr. Howe, at the time we were in New York, had gone to Washington, and was expected to return in a day or two. I left New York and returned to Philadelphia the same night. Mr. Barclay was the British consul at New York.

On my arrival from New York, I went directly from the depot to Jones' Hotel, where I saw Mr. Howe. This was on the 26th of March. Mr. Howe told me he had returned the same morning from Washington, and as he had received a message from Mr. Bucknell, through Mr. Mathew, he had waited here for the purpose of seeing me, as he was very anxious to see me. He had in the meantime, before my arrival, sent up for Mrs. Hertz to come down and see him, as he was indisposed ; but she declined to do so. He told me he had come from Washington, after having a very important interview with Mr. Crampton, and that Mr. Crampton told him that, as far as he could observe, the government of the United States had begun to feel a little uneasy about this matter ; in the meantime that I should go on and care for nothing, as I could be quite sure I would get immediate information in case the United States government should determine to prosecute the matter. I told him that I was not afraid, as I had the words of such men as Mr. Crampton and Mr. Mathew that nothing should happen to me. He told me that it was ten o'clock, and he expected to see Mr. Mathew, as he (Mr. Howe) would leave in the midnight train for New York. I told him that I was surprised that he had not sent me any money, as he said I should not be economical with it. He promised to write a note to Mr. Winsor, and all should be made right the next day, but the next day Mr. Winsor told me he had no orders ; Mr. Howe had not seen him. Mr. Howe told me to word my dispatches calling the men barrels or parcels. Mr. Howe also said, in this last connexion, that I could make a large amount of money ; that all I had to do was to blow a trumpet in the streets, and that I could get thousands for the foreign legion ; that Mr. De Korponay was highly recommended as a man of great connexion in the West and Texas, and that I should endeavor to see him,

and furnish him with the necessary means to start, and that as soon as I had sent him (Howe) word that I had engaged Korponay, he would send me money.

The next morning I received a telegraphic dispatch from Mr. Bucknell, asking how many parcels I would send, and that I should hurry them along; that there was another company wanting to join the next expedition, so that they should go to Boston together. I answered him immediately that I supposed 50 to 60 barrels would go off by the Sanford to-day. Some 47 went off by the Sanford that day. When I came to my office a half an hour afterwards, I was arrested. On Wednesday, the 28th of March, I was arrested, and on the 29th I went to Mr. Mathew's office and found Mr. Mathew in a deep conversation with De Korponay. He left Mr. De Korponay and invited me into the next room, and there said to me, "Do not be down-hearted, we will do everything for you in our power;" he meant by "we" Crampton, Howe, and himself. He also said that I should try to give Mr. Howe information of what had happened, and that I should go down to Mr. Winsor and get \$200; I went to Mr. Winsor; he told me he had made all right with Mr. Mathew; I went back to Mr. Mathew's and he (Mr. Mathew) handed the paper marked F. C. F. H., which is now in two parts. This paper Mr. Mathew wrote in my presence. The paper is in the following words:

"Please call at Jones' for \$200 left with Mr. Sharwood, the proprietor, by Mr. Howe, at 2 o'clock."

I went up to Mr. Sharwood, the proprietor of Jones' Hotel, and I received \$200 from Mr. Hicks, the book-keeper, to whom I showed this paper. The same day I went down to Moyamensing to see Mr. Budd, who had sent me a message that he had no money. I gave him \$5. I told him I could not procure bail for him, as the people did not want to go bail for a native who is engaged in a business of this character. My wife accompanied me, on this occasion, to the prison. I returned home with her, and there found a letter addressed to me; afterwards I went out to take a walk with my wife, and walked down Chestnut street, and met the porter of Jones' Hotel—John Allen I think his name is; he asked me if I had received the letter he had left at my house that day, as the British consul had given strict orders that the letter should be delivered as soon as possible. The letter is hereto annexed, marked G. C. F. H., and is the letter I found at my house, on the occasion referred to by the porter. I have seen Mr. Mathew's handwriting. I know his style of writing, and believe this letter marked G to be in his handwriting. The following is a copy of the letter:

"If the sole name in the warrant and indictment is that of Glenroy, the marshal is indictable for false arrest of the other parties.

"The counsel, if such a man as J. Tyler, O'Neill, or Lex, will paint this mean arrest in its true colors; he will prove that the parties interested were solely acting for themselves, with no powerful friend behind them to pay fines, from the sole desire to aid in a war which Europe holds to be the war of liberty; the one a German, the other a Britisher.

"If they have erred, their error is but light. Do these pretending

republican authorities seek to wreak vengeance on them for loving freedom with England better than Russia?

"The counsel's speech should be carefully published, and *will weigh* before a third hearing, which should be obtained.

"If, in truth, the British consul had no part in it, the attempt to involve him should be exposed.

"It may be easily shown Gilroy is not to be believed on oath. Is he a paid spy and traitor to entrap under false names!!

"Honorable marshal! Honorable district United States attorney!

"Honorable men, 'Captain Power,' and 'Lieut. Somers'!!!

"What is Gilroy's real name?

"Where *really* born? not where he says.

"What his character?

"What his reward?

"Is the German desiring liberty, or the Britisher desiring to aid his country in a war, to be held as a criminal!!!

"What has Russia paid the dominant power for this rigor?"

Some of the men who shipped on the morning of the arrest were not taken by the marshal, and went on to New York.

The book marked H is the book in which the names were entered in my office, together with the three sheets of paper marked H, 1, 2, 3. The names in the back of the book were the applicants for commissions.

The tickets produced in court are the tickets I gave to the men. Howe told me that the N. S. R. C. meant Nova Scotia Recruiting Company, but I might translate it Nova Scotia Railroad Company. I had them printed myself. Mr. Howe told me to print them in this way. The white ticket with N. S. R. and J. H. on it, are tickets which I obtained from Mr. Howe myself; the J. H. are in his own handwriting. I used only eight of these, which were the eight I gave to Mr. Winsor. Those I used had Mr. Howe's seal on in wax.

On Saturday, before Strobel left, I told Mr. Mathew at that time, that the different gentlemen who expected to get a commission were anxious to know what pay they were to receive. He told me he could not exactly tell me, but that I should call on Dr. Williams, and give him his (Mr. Mathew's) compliments, and he would give me Hart's Army List, which would give me the necessary information. I got the book from the Doctor, but could find nothing about the matter. I told Mr. Mathew of the result, and he said I should correspond with Mr. Howe about it, or, if he should see him first, he would mention it to him. The same night, on my return from New York, Mr. Howe told me he had got all the particulars from Mr. Crampton, so far as he knew it, and handed me the paper marked J. C. F. H.

The paper referred to contains a memorandum as follows:

"Ensign, 5-4 sterling.

"Lieutenant, 6-8 sterling.

"Captain, 11 and 2 sterling."

This paper states the pay of an ensign, 5s. 4d. per day; lieutenant, 6s. 8d.; a captain 11s., and 2s. for rations. Mr. Howe said those prices referred to the per-diem pay. I believe this paper to be in Mr. Crampton's handwriting.

The handbill marked K. C. F. H. (this is the handbill with the Queen's arms on it, already printed, *ante* page 114) is the bill brought me by Mr. Bucknell, together with the white tickets with Howe's seal on them. These bills are the same as those posted in my office. All these bills were destroyed in the presence of Mr. Bucknell the next day, together with the tickets he brought me, except the eight I gave to Mr. Winsor. He brought me nine hundred odd tickets with Mr. Howe's seal on.

When Mr. Bucknell was arrested, Mr. Mathew sent me word by a friend that he would be much obliged to me if I would not call on or correspond with him any more in this case, as he had apprehensions that he was closely watched by the United States officers. The same friend of Mr. Mathew told me it would be best for me to go direct to Halifax. Mr. Bucknell told me the same thing. Before I went to Halifax, I wrote a note to Mr. Mathew. He answered me that he could not do, nor would he do, anything for me in this case, which he had before directly stated to me, and that I had used some improper remarks against him. I answered him, that I was surprised to hear such remarks from him, as I had only said that the functionaries of the British government were perfidious, and I still think so.

I left for Halifax, and had in my possession a letter to Mr. Howe, stating what he ought to do in my behalf. At New York, I went to the office of Mr. Barclay, and saw Mr. Stanley, the vice-consul; he spoke with me about Mr. Howe, and told me that he was sorry that such heedless men as Mr. Howe had brought me and other honest people into a scrape without assisting us; he also told me that Bucknell was going to Halifax, and that he (Mr. Bucknell) was in the same position as myself. Mr. Stanley told me that Mr. Mathew had paid Mr. Bucknell's expenses, including lawyers' fees, all the expenses he had incurred, and expressed surprise that the same had not been done for me. Mr. Stanley paid my expenses from Halifax. I met at Mr. Stanley's office Mr. Jesson, who went from this place with Strobel to Halifax. He told me in Stanley's presence, that he, Strobel, and some other officers from Halifax, had been sent to the United States, and were now in the United States, and were under the special control of Mr. Crampton, and any money or funds that they required would be given them by different British officials, and the money which he (Jesson) required for enlisting purposes, he had to obtain from Mr. Crampton himself, and that he would go that same night to Mr. Crampton for that purpose. This was in the first part of June, about the 7th, long after my arrest. Mr. Jesson said he was at that time going on the enlisting business, under the direction of Mr. Crampton, and I saw him send fifteen men on that occasion to Boston, via steamboat, to go from thence to Halifax. Mr. Jesson told me he was then on his way to Washington to obtain money from Mr. Crampton for that purpose; that the whole enlisting business was now entirely under the special supervision of Mr. Crampton, who had taken the matter entirely in his own hands. This conversation was in the office of Mr. Stanley, who paid Mr. Jesson some money in my presence to pay for fifteen tickets for the men who were to go off that day.

I went with Mr. Jesson to the steamboat, and saw him pay the

clerk of the boat for the passage of these men. I saw the men arrive the next day in Boston. They were taken charge of by another English officer named Thunc. He boarded them at different boarding-houses, and told me they were to go to Halifax. I took the Cunard steamer for Halifax, where I arrived on the 9th. I met Mr. Carstensen at Halifax; we took a cab and drove out to Melville island. I saw in the barracks most of the people I sent from here; they were equipped, and were being drilled. The officer received me with great kindness, and Mr. Van Essen went with me to the city. At supper Mr. Van Essen was called out, and did not return. I met Mr. Howe; on landing from the steamer he greeted me very kindly, but said he had no time to see me, and stepped on board the steamer for England—that was the same steamer I arrived in. The next morning, the 10th, I went again to Melville island to see Mr. Van Essen, who had promised to introduce me to Sir Gaspard le Marchant. I was received by a man calling himself Major Weis, who told me there were strict orders not to allow me to come to the island again. I asked him to show me the order, for, unless I saw it, I would not leave the island if he were twenty times major. He had no written order, and I went on to the island. He sent immediately to the governor for instructions; in the meantime, he ordered the people and officers not to speak with me. In about a half hour the order arrived, and he presented it to me. I told him it was the order of the governor of the province; that I would like to see the order of the military governor, for without it I would not leave. He sent again to the fort, and the commanding English colonel of the forces came himself, and told me that no strangers were permitted to come on to the island. I left, in company with the colonel, in his caleche.

The barracks at Melville island, where the soldiers are kept, are a parcel of wooden sheds, scarcely equal to those in which a good Pennsylvania farmer keeps his cattle. I then went up to Sir Gaspard le Marchant, introduced myself, and told him what I wished. In the beginning he did not desire to have any connexion with me at all; but after I had presented to him, in strong language, the manner in which I had been treated in Philadelphia, as well as in Halifax, he replied it was not his fault, but Mr. Howe's. He also said that Mr. Howe had used \$120,000 in the recruiting business, and inasmuch as he had rendered no account of it yet, he could not tell how my account stood; that in the meantime I should give him a written statement of what I wished, and he would answer me the next day. I gave him the statement, and the next day I received the letter marked L, (C. F. H.) (This letter is already published, and will be found *ante* page 146, dated June 11, 1855.) I left Halifax the next morning. At the time he delivered the letter, which was handed to me by Mr. Wilkins, in the presence of Sir Gaspard, he told me that "when you return to New York, go to Mr. Stanley, and that he, Mr. Stanley, will then be able to settle with you." When I arrived at Windsor, I wrote a letter to the governor, Sir Gaspard le Marchant, in which I repeated all that I had said to him the day before, and told him that when I came to New York, if Mr. Stanley had no orders from him, I would publicly call on Mr. Crampton, Mr. Mathew, &c., and make

them account for the inducements held out to me, and through which I was brought into this difficulty. I arrived in New York, two days afterwards, from Windsor, and called on Mr. Stanley; but, as I had anticipated, he had no orders. Mr. Stanley begged me to be quiet, and not make any noise, and assured me that I should be munificently compensated for my services for the foreign legion. I went to Howard's Hotel, where I remained some time. While there, an old gentleman came in, asking me to abandon the English side. I said, "I can't do it."

I returned to Philadelphia about the 15th of June, and waited until the 17th for a letter which Mr. Stanley had promised to write. I did not receive it, and therefore wrote him a letter, in which I requested him to pay for my services—I meant the money the government owed me, and which he promised to obtain. I received in reply the letter marked M. (C. F. H.) hereunto annexed. (This letter is already published, and will be found *ante*, page 147.)

Previously to my going to Halifax, on the 23d of May, I wrote a letter to Mr. Crampton, in which I stated that I had received information that he (Mr. Crampton) and his secretaries, all together, had said that I was in correspondence with the Russian government, for the purpose of betraying their secrets, and if they did not apologize for making this charge, I would call upon him and the Russian minister to make a statement. To this letter I received the letter hereto annexed, marked N. (C. F. H.) (This letter is already published, and will be found *ante*, page 146.)

All that I did, in procuring and sending men to Halifax, for the foreign legion, was done by the advice and recommendation of Mr. Crampton, Mr. Howe, and Mr. Mathew. I was employed by Mr. Howe, and acted as his agent, with the knowledge and approbation of Mr. Crampton and Mr. Mathew. Mr. Mathew knew of both the expeditions I sent. He approved and encouraged me in sending them away. He encouraged me by his advice and counsel, and in giving me money to send them away.

The statement which I now have made, I have made voluntarily, without any inducement other than the regret I feel in having violated the laws of this country, and the desire which now prompts me to make every reparation in my power, by confessing my own fault, and exposing those who have induced me to enter into this illegal business. I make this statement in the hope that it may have its proper influence upon the government of the United States, in relation to any future action in the prosecution against me. I have made it, however, without any promise as to such future action, placing myself entirely upon the clemency of those who have the power to act in the premises.

HENRY HERTZ.

In testimony of all which, I hereunto subscribe my name and affix my seal, this eleventh day of October, A. D. 1855, and in the eightieth year of the Independence of the said United States.

CHARLES F. HEAZLITT,
United States Commissioner.

Mr. Woodbury to Mr. Marcy.

BOSTON, June 13, 1855.

SIR: A complaint was brought before me, some days since, against a German named Cauffman, for violation of the neutrality laws of the United States, by "hiring or retaining certain persons to go beyond the jurisdiction of the United States, with intent to be enlisted in the service of a foreign prince, Queen Victoria." The disclosures in the investigation of this cause produced other complaints and arrests. An investigation of a week has led to the discovery of many important facts, which I conceive it my duty to communicate in a distinct shape to your department, that the government may adopt any action which it shall see fit.

The provincial government of Nova Scotia has commenced, some two months since, the organization of a foreign legion, destined to serve in the British army in the war now pending in Russia. A proclamation signed by the provincial secretary, L. M. Wilkins, announces that a bounty of \$30, and a pay of \$8 per month, will be given to every recruit. It further announces that shipmasters bringing to Halifax "poor men desirous of enlisting shall be paid their passages."

The Hon. Joseph Howe, of Nova Scotia, late secretary, and I believe at present one of the railroad commissioners, came to the United States a month or six weeks since, and organized the recruiting service for this legion.

From various disclosures, as well as testimony, I am induced to believe the organization to be as follows:

Two regiments have been organized—one with Polish officers, one with German officers. About three hundred recruits were in dépôt at Halifax a fortnight ago; fifty have sailed since from this port to join. The instructions are to enlist no Irish. Germans are sought for. Major Weisse commands at the dépôt. Baron Fonescan, Doctor Beale, and Lieutenant Zeimichi are at Halifax also. The other officers are now in the States, engaged in the business of recruiting.

Information has been given me as to the details of the recruiting service, which I am inclined to credit.

New York has been the place where the enlistment has gone on most actively; Boston the shipping port for Halifax. Mr. Stanley, (a clerk, I believe, in the English consul's office,) and a Mr. Turnbull, are represented as having the organization of the financial department there.

Colonel Smolenski, a Pole, formerly captain in the Polish service, major in the Hungarian war, and in service in Belgium, but lately an engraver, 251 Broadway, room 11, is the chief military officer stationed there: he speaks good English and French. Lieutenant Yesson, a German, and a Pole named Trietarky, (I write from the sound,)

are the other military officers. A Captain Carstensen, a Dane, was here, and has fled; is probably there. Lieutenant Thoman was here, and has fled; is probably there. The inferior agents are boarding-house runners, intelligence-office keepers, &c. Jacoby resides in Christie street, office in Lewis street; Rosenbaum, 353 Greenwich, said to be chief enlisting agent.

The men gathered by these runners are sent on in squads of five to ten to Boston, their passages paid, and consigned to one of two or three German boarding-houses, where they are boarded until they can be shipped in a packet to Halifax.

Dr. Kieckbach, a German, has been, and Captain Sierewski, a Pole, Lieutenant Galitsky, alias Celagi, a Pole, are in charge here of the forwarding of men to Halifax. They pay the boarding-masters, and ship the men in the packets. There are two lines of packets from here to Halifax, and the agents of these lines have advanced the money to pay the charges in Boston, and get their pay and passage-money on the arrival of the squads in Halifax. About fifty Germans have been rejected at Halifax, and most of them returned to New York.

The boarding-masters are allowed four dollars a head for the men they send down; two for the runner; two for themselves. Complaint is made by many of the Germans going down that they are given but \$14, instead of the \$30 bounty promised, and paid 4*d.* a day instead of the \$8 per month promised in the proclamation.

Recruiting agencies are said to be established at Portland, Philadelphia, and Buffalo, and officers have gone further west to establish others.

Major Platt, represented as being of Mount Air, Canada, and his son, Captain Platt, are probably in charge of this division.

A large number of other officers are spread over the States in this business, some of whose names I am informed of, others not; but their residences I cannot give. There are now in arrest, as witnesses here, about twelve men who have been brought thus far on their way to Halifax. They have seen none but the runners and the forwarding agent here. A gentleman who has been connected with all their business has given much information, and other has been obtained by close investigation.

The agent in Philadelphia is Mr. John Smith; the one in Buffalo, Dr. Aschenfeldt.

I presume these details are sufficient to enable you to form an opinion of the extent and character of the violation of our neutrality now being attempted by the authority of the English government. Since these investigations began here, two squads, of 6 or 8 each, sailed to Halifax, and then, learning of the departure of a packet, I communicated with the collector of the port, who directed a watch to be kept on her; a squad of 21 men were seen to march to her, and were carried off. The agents who accompanied them to the packet are known.

But few enlistments have taken place in Boston, as there are but a few thousand Germans who live here. Now that these arrests have been made here, the shipping port will probably be changed to Phila-

delphia or New York, and soon, I presume, they will send their men to Canada as the safest route.

* * * * *

The district attorney has been absent from town for several days past, and in the conduct of these examinations has been represented by one of his assistants, who has performed with zeal and intelligence his proper duties. Except in the first case which came up, when we were not aware such important disclosures would be arrived at, I have not had the superior advantages of consultation with the United States attorney himself. Were he here, I should not undertake to give this information to the State Department, as it properly pertains to his official duty. Under the circumstances, however, I trust that neither the State Department nor the United States attorney will conceive that I am departing from propriety, or the respect due to them, in the course I have taken.

* * * * *

I have the honor to be, respectfully, your obedient servant,
CHAS. LEVI WOODBURY,

Commissioner Circuit Court U. S., District of Massachusetts.

Hon. WM. L. MARCY,
Secretary of State.

Mr. McKeon to Mr. Marcy.

SOUTHERN DISTRICT OF NEW YORK,
U. S. District Attorney's Office, June 18, 1855.

SIR: I have the honor to enclose an affidavit made by Morris Kieckbach, before George W. Morton, esq., one of the commissioners of the United States.

It relates to the means made use of by the colonial government of Nova Scotia to retain men within the jurisdiction of the United States, to proceed to Halifax, there to be entered or enlisted as soldiers of the Queen of Great Britain.

I have the honor to remain, with great respect, your obedient servant,

JOHN McKEON,
U. S. District Attorney.

Hon. W. L. MARCY,
Secretary of State.

SOUTHERN DISTRICT OF NEW YORK, ss:

I, Morris Kieckbach, of No. 206½ Canal street, physician, do swear that, about five months since, deponent arrived at this city from Brazils, and, at the instance of several families, went to Montreal, there to settle as a physician and surgeon. At Montreal deponent heard that the British government was about to form a foreign legion to go

into the service on the continent, and that the authorized agent of the government was then at Boston. I then went to Boston, and found Colonel Smolenski and Captain Carstensen. Smolenski was to raise a Polish regiment, and Captain Carstensen was to have a command in the battalion of Germans raised by Major Weisse. Smolenski introduced me to the honorable Joseph Howe, in Boston. He boarded at the Tremont House. This was about the 26th to the 28th of April last, or perhaps a day or two later. Mr. Howe declared himself to be the agent of the colonial government of Nova Scotia, and acknowledged me as staff or regimental surgeon to the Polish officers' regiment under Smolenski, and at the same time this deponent was engaged as the representative and agent, in lieu of Smolenski, at Boston. This deponent's duty, as such agent, was to receive the persons who had been enlisted and sent to Boston, to bring them into boarding-houses, ship them to Halifax, pay their debts, receive money from Clark, Jones, & Co., for account of Howe, and to pay \$4 a head for each man to the agent who had enlisted them. I acted as such agent to the 18th May. I drew \$327, Captain Carstensen \$949, and Colonel Smolenski \$465. Some of the men—say about 50 of 200 that I had sent—had been rejected at Halifax, who reproached me for having inveigled them. I then went myself to Halifax. I there received permission from Governor le Marchant and Messrs. Howe and McDonald to visit Melville island, which is used as a depot for these men. I found there about 200 soldiers, who were very discontented. There was another house in Boston which paid agents' fees, viz: Sprague, Soulé & Co.

I represented to Governor le Marchant that the men were discontented, and he promised to see them satisfied. He referred me to Mr. Crampton, the British minister at Washington, who was to refund me what I had advanced out of my own funds, and to arrange with him about the further organization. He said that he (the governor) had no further power; that the Home Office had transferred it to Mr. Crampton. I was told I would find Mr. Crampton at Washington, or at the British consulate of Mr. Grattan, in Boston, between the 5th and 15th June. Not finding Mr. Crampton there, I spoke to Mr. Grattan, who also referred me to Mr. Crampton, and said that he would not be in Boston. I then went to New York, and spoke to Vice Consul Stanley, British vice consul at New York. Mr. Stanley told me he heard and read that there was a warrant out against him; that there were many spies about, and that he had no order to pay me; and when I spoke to him about Mr. Crampton, he said that all my business with Crampton must come through him.

Dr. M. KIECKBACH.

Sworn to before me, June 18, 1855.

GEORGE W. MORTON,
United States Commissioner.

THE SEIZURE OF THE BARQUE MAURY.

*Report of the Committee of the New York Chamber of Commerce,
November 27, 1855.*

The committee appointed by the Chamber of Commerce to ascertain and report the facts connected with the late seizure of the American barque "Maury," on the information of Mr. Barclay, her Majesty's consul at New York, respectfully submit, for the information of the chamber, the following documents :

No. 1. Mr. Hunter, Assistant Secretary of State, to Attorney General, October 12, 1855.

No. 2. Telegraphic dispatch from Attorney General to United States attorney, New York, October 12, 1855.

No. 3. Attorney General to Secretary of State, October 12, 1855.

No. 4. United States attorney, New York, to her Britannic Majesty's consul, October 13, 1855.

No. 5. Same to collector of port, October 13, 1855.

No. 6. Attorney General to United States attorney, New York, October 13, 1855.

No. 7. Her Britannic Majesty's envoy, &c., to Secretary of State, with four affidavits, October 11, 1855.

No. 8. United States attorney, New York, to Charles Edwards, esq., October 16, 1855.

No. 9. Deputy surveyor of port to United States attorney, New York, October 15, 1855.

No. 10. Inspectors of customs to surveyor of port, October 15, 1855.

No. 11. United States attorney, New York, to Attorney General, October 17, 1855.

No. 12. Same to United States marshal, October 17, 1855.

No. 13. United States marshal to United States attorney, October 19, 1855.

No. 14. Messrs. Low to same, October 18, 1855.

No. 15. Charles Edwards, esq., to same, October 19, 1855.

No. 16. United States attorney, New York, to Attorney General, October 19, 1855.

No. 17. Attorney General to Secretary of State, October 19, 1855.

No. 18. Same to United States attorney, New York, October 22, 1855.

No. 19. Same to Secretary of State, October 22, 1854.

No. 20. United States attorney, New York, to Attorney General, October 20, 1855.

No. 21. A. A. Low & Brothers to John A. Stevens, chairman of committee of Chamber of Commerce.

No. 22. Depositions of J. N. Cornell and Wm. D. Craft, police officers, before the mayor, November 23, 1855.

Your committee have sought no further evidence, as all the facts and suspicions are comprised in these papers. Proceeding to consider their import, it is to be remarked that the firm in question are American merchants of this city, having a number of vessels, chiefly employed in the Pacific, China, and India seas; being, perhaps, more largely engaged in this branch of commerce than any other house in the United States; that they are directors and managers in many important commercial institutions, are of high commercial standing, and are well known as men of probity and honor.

Your committee find that the barque "Maury" was built in this city during the past summer for this firm; that she was advertised by them for thirteen days before the date of the affidavit, under their own name, in five daily papers, to wit: the *Courier and Enquirer*, *Journal of Commerce*, *Commercial Advertiser*, *New York Express*, and *Evening Post*, for Shanghae, in China; was loading wholly on freight; and never having taken her first clearance, her register had not been then issued from the custom-house; that there was on board an armament of four guns, with a moderate supply of small-arms, and also ten guns on freight, and that other cargo was being received. These guns were first placed in the lower hold, as temporary ballast; were afterwards raised to the between-decks, and were never concealed in any way whatever. Such armament and freight are not unusual for vessels bound for the China seas; and vessels similarly equipped have heretofore been dispatched from this and other ports in the United States, without suspicion or notice; and, apart from other circumstances, armament and guns in the China trade afford no cause to suspect any intended infraction of the neutrality or revenue laws, nor any intended illegal or questionable employment. Your committee have not been able to ascertain, and do not believe, that there were any other facts which could reasonably lead to such suspicions in regard to this vessel. It is manifest, however, that they were entertained by the British consul here, and by the British minister at Washington; for upon the affidavits and statements submitted by these functionaries, without a full ascertainment of the truth in a matter so important, and without an inquiry from the owners, and chiefly on an oath of belief, without a statement of the facts on which it was founded, the "Maury" was taken possession of by the United States marshal, on the afternoon of the 17th of October, under process from the United States court, founded on a libel, sworn to by the British consul, as forfeited for a breach of the neutrality laws.

In view of your committee, the feelings of a respectable firm, and the character of New York merchants, have been needlessly disparaged and assailed, through heedlessness and culpable want of inquiry, or strange credulity on the part of those making the representations to the officers of the American government; for it is clear that in the lapse of seven days, between the day on which the affidavits were made and the day of the seizure, the true destination of the vessel,

and all the facts of the case, could have been ascertained. The statement of Messrs. Low, so satisfactory after the seizure, could have been as easily obtained before it was made, by a simple application to them. Their advertisements of the vessel were in five daily papers, from the 27th of September to the 24th October; and the seizure, upon suspicions so carelessly, so credulously entertained, is truly remarkable.

The appearance of the marshal was the first intimation to the house that their standing and character had not protected them from the charge of being engaged in an unlawful and disgraceful undertaking. But these slanderous affidavits could not stand an examination, and instantly vanished before their simple statement. The exhibition of the unaccountable misapprehension, ignorance, and credulity, on which the charge was based, alone survives. The proceeding of Mr. Barclay was withdrawn on the second day—one day being lost by his unwillingness to act at all without seeing Mr. Edwards. The chamber will remark that the affidavits were all sworn upon the same day, (the 10th of October,) and that the steamer Pacific, which left this port on the 17th of October, took out the information which has caused so much excitement and alarm on the other side of the Atlantic, unless it was forwarded by a preceding steamer. This information, thus hurried off prior to the seizure of the “Maury,” was *ex parte* entirely, and no explanation could accompany it. By a public card of the 20th instant, Mr. Barclay denies “having written a dispatch to her Majesty’s government in regard to that ship. Therefore, from whom it emanated, and by whose indiscretion the relations between the two countries were rudely jarred, is wholly in the dark. The letters of Mr. Barclay and Mr. Crampton leave upon them the burden of answering the inquiry. Your committee were greatly surprised to observe, by Mr. Crampton’s note to the Secretary of State, that he had been informed by Mr. Barclay not only that “he has good reason to believe that this vessel (the ‘Maury’) is intended for the service of Russia in the present war, but that a plan exists for fitting vessels of a similar description in other ports of the United States, with the express design of committing hostility against her Majesty’s government, and more particularly of intercepting and capturing the British mail steamers plying between Liverpool and Boston.” For such a statement your committee have been able to find no warrant in the affidavit by any person, or of any fact, or indeed of any belief. They believe that no fact exists warranting any such statement, and they share a common surprise that any man living in this city, or having communication with it, should for a moment believe it. On the contrary, the committee have it from the highest authority that the government has no knowledge, belief, or suspicion that any privateer, or other armed vessel, is fitting out, or has been fitted out, in this country, for or against any of the European belligerents.

The committee further report, that the following card from the British consul appeared in the New York *Herald* of the 24th October, and do not find that it was published in any other paper:

“Misrepresentations on the above subject (regarding the ‘Maury’) having been published in various newspapers, among others that munitions of war were found on board ‘secreted under a quantity of cot-

ton,' I desire to disabuse the mind of the public of that impression by stating that such was not the case.

"Had my endeavors, made before information was formally lodged, to ascertain the owners of the ship 'Maury,' succeeded, the explanations which that respectable firm (Messrs. A. A. Low & Brothers) gave after the libel was filed would have been sought by me, and no doubt would have been given before, and the course which was adopted would not have been resorted to.

"A. BARCLAY,

"*Her Britannic Majesty's Consul.*

"NEW YORK, October 23, 1855."

This publication was not in time for the next steamer, which sailed from Boston for Liverpool the same day. It is for the chamber to consider whether this card was an adequate atonement to the house whose vessel had been seized, or to this commercial community; or whether, in so grave a matter, affecting the sensibilities of two great nations, the most speedy and wide-spread recantation was not due to both—alike from the British consul and the British minister.

The government of the United States, from the time of the administration of Washington to the present case of the 'Maury,' during all the contests which have existed since their independence, has, without fear or partiality, strictly enforced the rigid neutrality laws of the United States.

Although lawless men have sometimes escaped its vigilance, no administration of this government has given reason to doubt its determination to maintain them. When the authorities by accident have not been able to prevent the offences, they have uniformly brought the offenders to trial at the earliest opportunity; and such trials have always been made with all the urgency which is consistent with justice.

It is due to our country briefly to recall the features of our neutrality laws. They not only express the political but commercial sentiment of the country. First enacted in 1794, they have been continued and made more effectual by repeated subsequent enactments. No laws are more widely or generally known among public men. They forbid any citizen to accept any commission to serve against any people at peace with the United States. They forbid foreigners transiently within the United States, or on board any vessel within its jurisdiction, to enlist, or to go abroad to be enlisted, in the service of any nation at war with any such people. They forbid the fitting or arming any vessel, or increasing the armament of any armed vessel, with intent to be employed in any such service.

They forbid all military expeditions against any nation at peace with the United States, from the beginning, to provide means therefore, to the actual departure of such expeditions. They forbid the being concerned in fitting out any vessel to commit hostilities against any nation at peace with the United States.

These laws are the well-known expression of public opinion, and the common sentiment of the country. They have been enforced, as occasion required, against and in favor of all nations alike—against France, our earliest ally; in favor of Spain, when we had serious

questions with her; against the weak and rising republics of this continent; and now, without partiality or fear, against England, the most warlike and the most commercial of nations having relations with us.

The Chamber of Commerce of New York, holding these enactments as binding equally in law, honor, and conscience, claim but a common right in asserting that a charge of violating them—a charge which they deem a disgraceful impeachment—should not be lightly made, nor without careful inquiry, against any of their members.

The committee unanimously recommend to the chamber the adoption of the following resolutions:

1. *Resolved*, That the Chamber of Commerce of New York receive and adopt the report, as a correct statement, and as containing the sense of this body on the subject.

2. *Resolved*, That no proper amends or apology have been made to A. A. Low & Brothers, for the charge brought against them, which, if true, would have rendered them infamous; nor to the merchants of this city and country, so falsely and injuriously assailed.

3. *Resolved*, That the merchants of New York, as part of the body of merchants of the United States, will uphold the government in the full maintenance of the neutrality laws of the country; and we acknowledge and adopt, and always have regarded the acts of the United States for preserving its neutrality, as binding in honor and conscience, as well as in law; and that we denounce those who violate them as disturbers of the peace of the world, to be held in universal abhorrence.

All of which is respectfully submitted.

JOHN A. STEVENS,
GEORGE GRISWOLD,
P. PERIT,
E. E. MORGAN,
THOMAS TILESTON,
CHARLES H. MARSHALL,
STEWART BROWN,
MOSES H. GRINNELL,
ROYAL PHELPS,
ROBERT C. GOODHUE,
JAMES LEE.

NEW YORK, *November 27*, 1855.

APPENDIX.

No. 1.

DEPARTMENT OF STATE,
Washington, October 12, 1855.

SIR: By direction of the Secretary of State, I have the honor to enclose a copy of a note of the 11th instant, addressed to this depart-

ment by Mr. Crampton, her Britannic Majesty's minister, and of the affidavits which accompanied it, relative to a vessel called the "Maury," which is stated to have been fitted out at New York, in violation of the laws of the United States, for the purpose of cruising against British vessels.

I have the honor to be, very respectfully, your obedient servant,
 W. HUNTER,
Assistant Secretary.

Hon. CALEB CUSHING, *Attorney General.*

No. 2.

WASHINGTON, *October 12, 1855.*

(By telegraph.)

Mr. Crampton alleges that the vessel called "Maury," in Dover-street dock, is armed for war against England. Please take information from Mr. Barclay, and prosecute if cause appears.

Copies by letter to-morrow.

C. CUSHING.

JOHN McKEON, *Attorney U. S., New York.*

No. 3.

ATTORNEY GENERAL'S OFFICE,

October 12, 1855.

SIR: I have the honor to inform you that, in consequence of the information communicated this day by Mr. Crampton, the minister of Great Britain, in regard to the vessel called the "Maury," instructions have been dispatched to the attorney of the United States in New York to advise immediately with Mr. Barclay, the British consul there, and to institute the proper legal proceedings in the case, if sufficient cause to justify the same shall appear.

I am, very respectfully,

C. CUSHING.

Hon. W. L. MARCY,
Secretary of State.

No. 4.

SOUTHERN DISTRICT OF NEW YORK,

U. S. District Attorney's Office, Oct. 13, 1855, 9½ A. M.

SIR: Late last evening I received from the Attorney General of the United States a telegraphic dispatch, requesting me to obtain infor-

mation from you, in relation to a vessel in this port, supposed to be engaged in a violation of our neutrality laws.

I called this morning at 9½ o'clock at your office, with the marshal of this district, but the office was not open. Will you do me the favor to call at once at my office, or send to me the information, so that I may act?

With great respect, I remain, your obedient servant,

JOHN McKEON,
U. S. District Attorney.

ANTHONY BARCLAY, Esq.,
Consul of her Britannic Majesty.

No. 5.

SOUTHERN DISTRICT OF NEW YORK,
U. S. District Attorney's Office, October 13, 1855.

SIR: You will please send at once on board of a vessel called the "Maury" an inspector, and examine into her cargo.

She lies at Dover street dock. You will please delay her clearance until a report is made to me of her cargo.

Very respectfully, your obedient servant,

JOHN McKEON,
U. S. District Attorney.

H. J. REDFIELD, Esq.,
Collector, &c.

No. 6.

ATTORNEY GENERAL'S OFFICE,
October 13, 1855.

SIR: Yesterday I telegraphed you concerning the ship "Maury," said to be fitting out in New York, in violation of the statutes of the United States.

I now enclose to you a copy of a dispatch from Mr. Crampton, the British minister, dated the 11th instant, to which I there referred. With this document before you, and the information which Mr. Barclay may impart, you will be able to understand what further it may be proper for you to do in the premises.

I am, very respectfully,

C. CUSHING.

JOHN McKEON, Esq.,
United States District Attorney.

No. 7.

BRITISH LEGATION,
Washington, October 11, 1855.

SIR: I have the honor to call your attention to the enclosed depositions, which have to-day been forwarded to me by Mr. Barclay, her Majesty's consul at New York, in regard to a vessel called the "Mau-ry," which is now fitting out at that port, and which, it appears, is evidently intended for warlike purposes.

Mr. Barclay further informs me that he has good reason to believe that this vessel is intended for the service of Russia in the present war, and also that a plan exists for fitting vessels of a similar description in other ports of the United States, with the express design of committing hostilities against her Majesty's government, and more particularly of intercepting and capturing the British mail steamers plying between Liverpool and Boston.

However this may be, the circumstances stated in the enclosed affidavits are of so positive a nature, and bear so suspicious an appearance, that I feel it to be my duty to call the attention of the United States government to the matter, with a view to an inquiry into the facts; and if these shall be confirmed, to the adoption of such measures on the part of the United States authorities as may defeat the hostile intentions which appear to be entertained by the persons engaged in fitting out the vessel or vessels in question.

I avail myself of this opportunity to renew to you, sir, the assurance of my high consideration.

JOHN F. CRAMPTON.

Hon. WM. L. MARCY.

City, County, and State of New York:

Anthony Barclay, her Britannic Majesty's consul for the State of New York, being duly sworn, doth depose and say: That from information given to him, he verily believes, and expects to be able to prove, that a certain new vessel, now in the port of New York, called the "Mau-ry," has been built, fitted out, and armed, with intent that such vessel should be employed by the Russian government to cruise and commit hostilities against the subjects and property of the queen of Great Britain, with whom the United States are at peace, and this deponent stands ready to bring forward his proof thereof; and he respectfully claims that proceedings be had and taken, whereby the said vessel, with her tackle, apparel, and furniture, together with all material, and ammunition, and stores, which may have been procured for this building and equipment thereof, shall and may be forfeited.

ANTHONY BARCLAY.

Sworn to this 10th day of October, 1855, before me,

GEORGE W. MORTON,

United States Commissioner.

City, County, and State of New York :

John N. Cornell, of New York city, police officer and dock-master of the eleventh ward, being duly sworn, maketh oath and saith : That his suspicions have been excited for several weeks past by the appearance of a new three-masted, square-rigged schooner, which was lying at the foot of Stanton street, New York, up to Monday evening, the 8th of October, when she moved down to Dover street dock, and is there now ; that she has the name of the "Maury" upon her stern, but has never yet been out of port, and deponent has ascertained at the custom-house of the port of New York that she has not at present got her register ; that this deponent is well acquainted with the build of vessels, and he has no hesitation in deposing that this vessel, named the "Maury," is built, rigged, and equipped for warlike purposes, and has not the construction of a vessel for the merchant service ; that his suspicions were particularly aroused from the nature of her cargo she has taken on board, which consists of war cannon, cannon balls, small arms, coals, sixty or eighty extra spars, and other mercantile articles ; that this deponent, within a few days last past, has been over the whole of the said vessel ; at the bottom of the said vessel, and just above what appears to be intended as ballast, are from two hundred to three hundred square boxes, containing cannon balls ; also, there are from eighteen to twenty cannon intermingled with the said boxes, apparently so that they may pack well ; on the top of the cannon is a large quantity of coal, while on top of the coal is a lot of lumber and the aforesaid extra spars ; in the lockers of the cabin is a very large quantity of guns, pistols, swords, and other implements of war ; and this deponent verily believes that she is so fitted out for warlike purposes ; her cannon are all mounted, and she has port-holes for cannon. And this deponent further says, that a person who assumed to act as first mate of the vessel showed her to deponent, and remarked she had a curious kind of cargo, and the manner of the mate was such as to make defendant believe that the vessel was going on a warlike voyage ; the said mate told deponent that some of the aforesaid cannon were for eighteen and twenty pound ball, and that the cannon on the main deck were for nine pound ball calibre ; deponent saw the mark "23" upon one of the cannon, and the mate said that was the number of the cannon ; and this deponent further saith, that from all he knows and has been informed, and has observed, he believes that the said vessel, the "Maury," has been built, and armed, and equipped as aforesaid, by the Russian government, or its agents, to be used for war purposes against Great Britain ; and he hereby informs against her and her equipment accordingly.

JOHN N. CORNELL.

Sworn at the city of New York, second circuit, the 10th day of October, 1855, before me,

GEORGE W. MORTON,
United States Commissioner.

City, County, and State of New York:

Charles Edwards, of the city of New York, counsellor at law, being sworn, maketh oath and saith, he verily believes the new vessel "Maury" has been built, equipped, and loaded by and for the Russian government, to be used in the present war against the vessels and subjects of Great Britain.

That a person, who deponent believes has been in the pay of Russia, gave him a full explanation of the armament on board the said vessel, which tallies with the statement contained in the affidavit of John N. Cornell, hereto annexed, except that the explanation to this deponent was much more minute.

Also, this deponent gathered from the person referred to, that the said vessel, the "Maury," when outside of port, would ship a new crew of about eighty men, and she would be employed at first more particularly in attempting to overhaul some one or more of what are known as the "Cunard steamers," (British vessels,) and take them as prizes, put additional coal on board, and guns, and then go in company; while there were also other vessels built and fitted out by the Russian government similar to the "Maury," who were ready to join her on a similar errand, with an ultimate destination against British possessions in the eastern hemisphere.

CHARLES EDWARDS.

Sworn at the city of New York, second circuit, the 10th day of October, 1855, before me,

G. W. H. MARTIN.

City, County, and State of New York:

William D. Craft, of New York, first lieutenant of police, of the eleventh district of police for the city of New York, being duly sworn, doth depose and say: That on the 6th day of October, instant, he went on board a new vessel called the "Maury," then lying at the foot of Stanton street, New York, and was shown over her. On her upper deck were six cannon all mounted, and port-holes for the guns, and between-decks were ten cannon, all mounted; also, deponent saw a quantity of horse-pistols in the cabin; there was coal on board, and deponent was informed that there were a number of guns underneath the coal. Deponent also discovered boxes between-decks. The between-decks were all clear fore and aft, with the exception of pumpwell and chain-box. She was painted white between-decks, with the exception of the lower side of the deck-beams, they being of yellow pine. And this deponent also saith, that he was a ship-carpenter by trade, and from his observation of the particular build, furniture, and apparel of the said "Maury," he believes she is a vessel-of-war.

WM. D. CRAFT.

Sworn at the city of New York, second circuit, the 10th day of October. 1855, before me,

G. W. H. MARTIN, *M. Cir.*

No. 8.

SOUTHERN DISTRICT OF NEW YORK,
U. S. District Attorney's Office, October 16, 1855.

SIR: I have prepared a libel against the ship or vessel called the "Maury," upon the facts laid before the government by her Britannic Majesty's envoy at Washington.

A verification of the pleading is required to be made by some party officially recognized as representing her Britannic Majesty's government at this port.

I am, very respectfully,

JOHN McKEON,
United States District Attorney.

CHARLES EDWARDS, Esq.

No. 9.

CUSTOM-HOUSE, NEW YORK,
Surveyor's Office, October 15, 1855.

SIR: I enclose report of district officers who examined the barque "Maury," pursuant to instructions. This barque is new, and has not yet taken out her register; said to be owned by Low & Brothers, whose vessels are all, I believe, engaged in the China trade.

Very respectfully, your obedient servant,

J. L. BENEDICT,
Deputy Surveyor, for Surveyor.

H. J. REDFIELD, Esq., *Collector.*

No. 10.

NEW YORK, *October 15, 1855.*

DEAR SIR: Pursuant to instructions, we have been on board the barque "Maury," and found her laden on her ground-tier with coal, and naval stores above the coal.

She was taking on board, on Saturday last, the 13th, cases of goods, casks of hardware, scales and beams, pickles, preserves, and catsups.

She has on her lower deck *ten*, and on her upper deck four cannon, all mounted.

The dock clerks say she is loading for Shanghae, to go in the opium trade.

Yours, respectfully,

JACOB BITTEL,
 A. W. SHADBOLT,
Inspectors.

JOHN COCHRANE, Esq.,
Surveyor of the port.

No. 11.

SOUTHERN DISTRICT OF NEW YORK,
U. S. District Attorney's Office, October 17, 1855.

SIR: I have the honor to report that, acting on the communication from you, and after consultation with Mr. Barclay and his legal adviser, I have this day filed a libel on the admiralty side of the United States district court against the vessel assuming to be called the "Maury," under the 3d section of the neutrality act of the 20th of April, 1818.

With high respect, your obedient servant,

JOHN McKEON,
United States District Attorney.

Hon. CALEB CUSHING,
Attorney General of the United States.

No. 12.

SOUTHERN DISTRICT OF NEW YORK,
U. S. District Attorney's Office, October 17, 1855.

SIR: I take the liberty to request that you will have the cargo of the "Maury" carefully examined, and communicate to me the result.

It is proper for me to state, that it is supposed that you will find munitions of war stowed under the lading of coal on board.

Very respectfully,

JOHN McKEON,
U. S. District Attorney.

A. T. HILLYER, Esq.,
U. S. Marshal, Southern District New York,

No. 13.

SOUTHERN DISTRICT OF NEW YORK,
U. S. Marshal's Office, N. Y., October 19, 1855.

SIR: In reply to your communication of the 17th instant, requesting me to have the cargo of the "Maury" carefully examined and report to you the result, I beg leave to inform you that I have ascertained there are 250 tons of coal in the run of said vessel; 10 iron cannon between decks, mounted on wooden carriages; 4 ditto on deck; a number of boxes containing muskets, not opened; a number of small and side-arms in the cabin; a lot of shot, and an assorted cargo, lumber, &c. Should it be deemed necessary to have the cargo thoroughly overhauled and the coal taken out, the expense attending such labor

would not be less than \$150 or \$200. Awaiting your further instructions in the case,

I remain your obedient servant,

AB. T. HILLYER,
United States Marshal.

JOHN McKEON, Esq.,
United States Attorney.

No. 14.

NEW YORK, October 18, 1855.

SIR: The barque "Maury," owned in part by the undersigned, having been seized by a process from your office, we beg to offer the following explanations, viz:

That the said vessel was built by Messrs. Roosevelt, Joice & Co., of this city, under a contract made in the month of April last, after the model of the barque Penguin; that she was designed for the China trade; that there is nothing peculiar in her construction, apart from the rig, which was adopted with particular reference to economy in men; that, in pursuance of the original intention, she was advertised some three weeks since for Shanghae, since which she has been receiving freight for that port; that she has on board, from Messrs. Fogg & Brothers, 200 tons of coal, a quantity of naval stores, and a variety of ship-chandlery, for their house in China, with a little other general freight, with which she is expected to sail the coming week, under the command of Captain Fletcher, for the port above named.

We further declare, that in addition to the ordinary armament of a vessel of her class, she has but two deck guns, supposed to be necessary in consequence of the great increase in the number of pirates on the coast of China; that the other guns, shot, &c., on board, as per subjoined list, were purchased under an order from an American gentleman at Canton, and shipped per "Maury" on freight; that said vessel has four spare spars, one fore-topgallant mast, one fore-topgallant yard, one main boom, one main gaff-boom, and five extra studding-sail booms; and that her crew will consist of but twelve or fourteen men before the mast.

They furthermore declare that the vessel received the name of "Maury" in the month of May last, not to dishonor a man of whom our country has so much reason to be proud, but to bear upon an honorable mission the name of him who has done so much to improve navigation.

The undersigned pledge themselves to prove to the satisfaction of the British consul, while the vessel is still under the charge of the United States marshal, that the allegations made against the vessel are false; that she has no guns or materials of war under her coal, asking only that the expense to which they may be thus subjected shall be borne by the said consul when, and only when, the

statements upon which the vessel has been so unjustly seized are fully disproved.

Finally, they declare that the Russians have no connexion, whatever with the enterprise in question.

A. A. LOW,
Of the firm of A. A. Low & Brothers.

Hon. JOHN McKEON,
U. S. District Attorney.

On freight 10 guns, 62 boxes of shot.

Sworn to before me, this 18th day of October, 1855.

GEORGE F. BETTS,
U. S. Commissioner.

I hereby swear that I am cognisant of the facts mentioned in the foregoing statement, and that they are true.

NATH. B. PALMER.

Sworn to before me, this 18th day of October, 1855.

GEORGE F. BETTS,
U. S. Commissioner.

No. 15.

In the matter of the "Maury."

NEW YORK, October 19, 1855.

DEAR SIR: From the explanations made in the case by Messrs. A. A. Low & Brothers, under oath, and your own very proper suggestions, I deem it reasonable that you should be left entirely free; confessing that, although statements to me were very strong, it would be but fair towards the owners to "lift" the libel.

I remain, dear sir, yours always, very respectfully,

CHARLES EDWARDS.

JOHN McKEON, Esq.,
U. S. District Attorney.

No. 16.

SOUTHERN DISTRICT OF NEW YORK,
U. S. District Attorney's Office, October 19, 1855.

SIR: Since filing the libel against the barque "Maury," reported to you on the 17th instant, I have been attended by one of the firm of A. A. Low & Brothers, the owners of the "Maury," who furnished me an original statement, which I enclose.

Charles Edwards, esq., was present when the explanations were made, and has addressed to me a letter, of which I transmit a copy. Upon a full view of all the circumstances, I deemed it right to order a discharge of the vessel, and to ask your concurrence in dismissing the libel.

I have the honor to remain, sir, your obedient servant,

JOHN McKEON,
U. S. District Attorney.

Hon. CALEB CUSHING,
Attorney General U. S.

No. 17.

ATTORNEY GENERAL'S OFFICE,
October 19, 1855.

SIR: I have the honor to enclose herewith a copy of a letter this day received from Mr. McKeon, attorney of the United States for southern New York, reporting the institution of process against the vessel called "Maury," as to which complaint has been made by the British minister, alleging that said vessel is armed, in violation of law, to cruise against a friendly power.

I am, very respectfully,

C. CUSHING.

Hon. WILLIAM L. MARCY,
Secretary of State.

No. 18.

ATTORNEY GENERAL'S OFFICE,
October 22, 1855.

SIR: I have received your letter of the 19th instant, communicating the result of inquiry regarding the barque "Maury."

The allegation against that vessel was improbable on its face; but, determined as the President is not to suffer any one of the belligerent powers to trespass on the neutral rights of the United States, it was deemed proper to investigate the case, out of respect for the British minister, through whom the British consul at New York preferred complaint in the premises.

It is made manifest, by the documents which you transmit, that the suspicions of the British consul as to the character and destination of the "Maury" were wholly erroneous; and justice to her owners and freighters requires that the libel against her be dismissed.

I have the honor to be, very respectfully,

C. CUSHING.

Hon. JOHN McKEON,
Attorney of United States, New York.

No. 19.

ATTORNEY GENERAL'S OFFICE,
October 22, 1855.

SIR: I have the honor to communicate to you the history and result of the proceedings in the case of the barque "Maury," of New York.

In consequence of the British minister's communication to you of the 11th instant, and which you referred to me on the day of its receipt, (the 12th,) brief instructions were on the same day dispatched by telegraph to Mr. McKeon, attorney of the United States for the southern district of New York, and more detailed instructions by mail the next day, requesting him to make immediate inquiry on the subject of the "Maury," to consult thereon with Mr. Barclay, the British consul at New York, and, if sufficient probable cause appeared, to institute the proper process against her in the district court.

These instructions were induced by the documents communicated by the British minister, copies of which were transmitted by me to Mr. McKeon.

The documents consisted of—

1. An affidavit by Mr. Barclay, setting forth that he believed, and expected to be able to prove, that the "Maury" was built, fitted out, and armed, with intent to be employed by the Russian government to cruise against the subjects of Great Britain, and that he stood ready to bring forward his proof thereof.

2. An affidavit of one Cornell, purporting to be a police officer in New York, who professes to describe the build, equipment, armament, and cargo of the "Maury," and concludes with expression of belief that she was built, armed, and equipped by the Russian government for war purposes against Great Britain.

3. An affidavit of one Craft, also purporting to be a police officer in New York, who speaks more guardedly, briefly describes the visible armament of the "Maury," repeats hearsay as to her freight, and expresses belief that she is a vessel-of-war.

4. Finally, the affidavit of Mr. Edwards, a counsellor-at-law in New York, understood to be counsel for the British consul, who says that he verily believes that the "Maury" was built, equipped, and loaded by and for the Russian government, to be used in the present war against the vessels and subjects of Great Britain.

Mr. Edwards then proceeds to state that a person, who he believes has been in the pay of the Russian government, gave him a full explanation of the armament and destination of the "Maury." He (Mr. Edwards) "gathered from the person referred to," that the plan of the "Maury" was to attack and capture one of the Cunard British mail steamers, arm the prize, and, after being joined by other vessels of the same construction, built and fitted out by the Russian government, to proceed to attack the "British possessions" in the East Indies.

The representations concerning the "Maury," which Mr. Edwards thus adopted, were so grossly improbable on their face, and had so much the air of a contrivance to impose on him, and, through him,

the British consul, as to produce some hesitation in my mind as to the propriety of instituting process in the case; but the specific and positive statements of Cornell and Craft, especially the former, as to the build, rig, armament, and imputed contents of the vessel, seemed to me, on the whole, to justify and require an examination of the case, at the hazard of possible inconvenience to innocent parties.

To make such examination effectual, it was necessary to libel the "Maury," and place her in charge of the marshal.

I have now received from Mr. McKeon a report of the result of the investigation.

It appears that the "Maury" was owned in part by Messrs. A. A. Low & Brothers, who have afforded satisfactory information as to her construction, character, and destination.

They make affidavit that she was built and equipped for trade with China, having, in addition to the ordinary armament of vessels in that business, only two deck guns, deemed requisite on account of the increase of piracy in the seas of China.

It further appears by these explanations, that the statements made as to the guns and munitions of war and extra spars on board the "Maury" were inaccurate, to use the mildest admissible expression; that the surmises as to the illegality of her character are not substantiated by proof; and that she is, in fact, advertised for general affreightment, and receiving cargo destined for Shanghae.

Neither Mr. Barclay nor Mr. Edwards brought forward any evidence to contradict these facts; on the contrary, Mr. Edwards has, in a letter addressed to Mr. McKeon, expressed his conviction of the propriety of dismissing the libel; which is also recommended unreservedly by Mr. McKeon.

Under these circumstances, it affords me pleasure to enable you to give assurance that the Cunard mail-steamers may continue to enter and to leave our ports, without apprehension of being captured by the "Maury," and converted into Russian men-of-war for the prosecution of hostilities in the East Indies.

I annex copies of Mr. McKeon's report; of the affidavits submitted by parties interested in the "Maury," or in her lading; and of the letter of Mr. Edwards to Mr. McKeon.

I am, very respectfully,

C. CUSHING.

Hon. WM. L. MARCY,
Secretary of State.

No. 20.

SOUTHERN DISTRICT OF NEW YORK,

U. S. District Attorney's Office, New York, November 20, 1855.

SIR: I have the honor to enclose a copy of a letter received from Hon. M. H. Grinnell.

I am not aware of any objection on our part, but still I desire to

have your assent to the application before I deliver the papers referred to in Mr. Grinnell's letter.

Very respectfully,

JOHN McKEON,
United States District Attorney.

Hon. CALEB CUSHING,
Attorney General, &c.

No. 21.

To John A. Stevens, Esq., Chairman of Committee of Chamber of Commerce.

The barque "Maury" was launched about the last of September; and, at an early day thereafter, the undersigned agreed, with Fogg Brothers, of this city, to take for them to the port of Shanghae, in China, two hundred tons of coal, one thousand barrels of merchandise, and seventy to eighty tons of measurement goods.

The coals not being at once available, ten mounted guns and their equipments, intended to have been sent by the "N. B. Palmer," but not ready in season for her, were sent to the vessel to be placed in her bottom, and to serve as ballast till the coal could be had. When this was put on board, the guns were raised between decks, and shortly afterwards the vessel was moved to her berth at pier 27 East river.

Having been publicly advertised by the undersigned for the port of Shanghae, in five daily papers, the "Maury" was receiving freight at the place above named on the seventeenth day of October, at 2 to 3 o'clock p. m., when the United States deputy marshal appeared on board, displaced the captain, and ordered the hatches of the vessel to be closed.

Captain Fletcher immediately made known to us what had taken place, and the writer repaired to the office of the United States district attorney to obtain an explanation. He was in court, and appointed the following morning for an interview. At 9 a. m. of Thursday, the 18th, the writer called at his office with his partner, Mr. Lyman, and Mr. Fogg, of the firm above referred to, and finding that the vessel had been seized by reason of information lodged against her by the British consul, as set forth in the accompanying deposition, the following statement was drawn up and sworn to. [See No. 14.]

This, the district attorney said, he would forward to Washington. In the meantime, he was willing to release the vessel on our giving bail, which we thought it best not to do.

From the district attorney the writer went to Mr. Barclay, made the explanations which had been given to the former, showed the order under which the guns had been purchased, and requested a withdrawal of his complaint against the barque. Mr. Barclay was not willing to act without first seeing Mr. Edwards, his counsel, and a party to the complaint. When called upon a second time, the state-

ment made to the district attorney was read to him, but he was still unwilling to act without Mr. Edwards.

On the following day, about forty-eight hours after the vessel was seized, Mr. Edwards called at the district attorney's office, withdrew the complaint, and the libel was lifted without any charge to the owners of the "Maury."

It is due to the district attorney to state, that in the meantime the vessel was allowed to receive cargo under the surveillance of two of the marshal's men.

On Monday, the 22d, Mr. Barclay called at the office of the subscribers, and expressed his regret that he had occasioned us so much trouble; and was told that the least he could do was publicly to acknowledge the error into which he had been betrayed, and to say that the vessel had been seized in ignorance of her ownership.

A paragraph from the *Boston Daily Advertiser* was shown to Mr. Barclay, as an evidence of the exaggerated character the report of the vessel's seizure was assuming in other places. On Wednesday, the 24th, the following appeared in the *New York Herald*:

"Misrepresentations on the above subject having been published in various newspapers—among others, that munitions of war were found on board, 'secreted under a quantity of cotton'—I desire to disabuse the mind of the public of that impression, by stating that such was not the case.

"Had my endeavors, made before information was formally lodged, to ascertain the owners of the ship Maury, succeeded, the explanations which that respectable firm, Messrs. A. A. Low & Brothers, gave after the libel was filed would have been sought by me, and no doubt would have been given before, and the course which was adopted would not have been resorted to.

"A. BARCLAY, *H. B. M.'s Consul*.

"NEW YORK, *October 23, 1855.*

The undersigned beg to say, that it had been publicly announced in New York papers, again and again, that the vessel was building for them; she was publicly advertised in their name; insurance had been done upon her to a large amount in Wall street; the deponents Cornell and Craft are well known to the builders, are accustomed to be in their yard almost daily, and it is impossible to resist the conviction that to them at least it was known for whom she was preparing for sea.

They respectfully ask, then, if the evidence upon which the complaint is founded should be weighed against the character and standing of respectable and responsible men; if it was of a nature to warrant so extreme a measure, without the most rigid inquiry in a proper direction; and, when shown to be utterly worthless, whether the apology of Mr. Barclay was of that prompt and ample character which one honorable man should delight to make to another whose reputation he has, unwittingly, unjustly called in question?

A. A. LOW & BROTHERS,

By A. A. Low.

No. 22.

City and county of New York, ss.

John N. Cornell, policeman of the eleventh district of this city, acting as dockmaster, being duly sworn, doth depose and say: That in September last he was applied to, by the person acting as mate of the three-masted schooner or ship "*Maury*," then launched about one week from the shipyard of Roosevelt, Joice & Co., to give said vessel a berth at the foot of Stanton street, East river. That this deponent gave said vessel a berth, and was in the habit of seeing her every day whilst she lay at that berth. This deponent further says, his particular attention was called to said vessel by some cartmen telling him that they had seen cannon going on board, and asked this deponent if he knew what it meant. This deponent was then invited by the mate to go on board, which he did, and was shown by the said mate several cannon in the hold, and some small-arms in the cabin, and said mate at the same time remarked to mechanics working on board that he supposed there was a vessel of war waiting outside for us, and here was an officer on board (alluding to this deponent) ready to take possession of the vessel. And this deponent further says, that in reply to an inquiry made of the said mate, he said he had shipped on board the "*Maury*" to go to the China seas, but that he had a damned queer cargo to go there.

And this deponent, from these circumstances, and from what he had seen, had his suspicions excited that all was not right, and so stated in general conversation in his family, and in the presence of his son, *John T. Cornell*, a law student or clerk in the law office of *Charles Edwards, esq.*, attorney at law, 35 Pine street, this city. A few days after this conversation in the family of this deponent, his son told this deponent that his employer, *Mr. Edwards*, would like to see him; and one or two days thereafter he repaired to the office of said *Edwards*, and in reply to his inquiries, and at his request, narrated the above circumstances; the said *Edwards* at the same time telling this deponent that some person, a stranger to him, had made to him similar statements. And this deponent further says, that said *Edwards* stated that the person who had been his informant told him that it was designed to fit out the "*Maury*" as a Russian privateer, for the purpose of capturing one of the Cunard English steamers, and asked this deponent to make an affidavit of what he had seen and heard of this vessel, and all other particulars relating to her or her equipment; but that this deponent should first get some person who was better acquainted with vessels also to go on board and see what he could, as combative, particularly whether the vessel looked like a vessel-of-war.

And this deponent further says, that said *Edwards* told him that if he, this deponent, could be the means of detecting this movement, and it should turn out that the vessel was being fitted out for such a purpose, this deponent would receive a large reward. This deponent then returned to the station-house, and informed *Lieutenant Craft* of the circumstances, knowing that said *Craft* had been a ship-

carpenter by profession, and was a judge of vessels. Said Craft consented to go on board and look at the "Maury," and did go on board and make examinations. And this deponent further says, that he and said Craft, a few days afterwards, went down to the office of said Charles Edwards, at whose request both this deponent and Craft went to the office of the United States district attorney, to make oath to the affidavits in the premises, which had been previously drawn up by said Edwards in his own office. And this deponent further says, that at the office of the district attorney he was presented to John McKeon, esq., to whom he stated the whole matter, and who, after reading this deponent's affidavit, stated that it was very suspicious, and that he thought there was enough to seize the vessel, and informed this deponent that, if there could be sufficient evidence obtained to seize the vessel, this deponent "would make a good thing of it."

And this deponent further says, that about one or two weeks after this, his son, John T., informed him that the owners, Messrs. Low, had explained everything satisfactorily to Mr. Edwards, and that the "Maury" had been allowed to sail.

JOHN N. CORNELL.

Sworn before me, this 23d November, 1855.

FERNANDO WOOD, *Mayor*.

William D. Craft, lieutenant of the 11th district police, being duly sworn, deposes and says: That he is the person alluded to in the deposition above made by John N. Cornell, and that the said deposition is true, of his own knowledge, so far as it refers to this deponent going on board of the "Maury" at his request and making an affidavit at the office of Mr. Charles Edwards, at the request of said Edwards. And this deponent further says, that his suspicions were somewhat excited as to the character of the "Maury" from her model, her rig the armament on board, and the general rumor as to Russian privateers.

WM. D. CRAFT.

Sworn to this 23d November, 1855, before me,

FERNANDO WOOD, *Mayor*.

